

# APPENDIX III

## *HUD's General Provisions for Contracts*

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## APPENDIX III

### HUD General Provisions

The following terms and conditions apply to any contract for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development (“HUD”). In addition, Contractor shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>.

#### 1. CONTRACT CONSTRUCTION AND PRIORITY

All terms and conditions of the contract, including those set forth in these Appendices shall be read in concert with each other so as to avoid conflicts and give each provision meaning and effect. However, should a conflict arise between terms, the conflict shall be read and applied as narrowly as reasonably possible and the federal term, condition, and/or applicable law or regulation shall take priority over any state regulation or contractual term or condition.

#### 2. HUD-SPECIFIC TERMS AND CONDITIONS

The contract shall be subject to HUD-specific terms and conditions applicable to the instant housing program, such as 24 C.F.R. Part 883, Subpart F. This includes, but is not limited to the foregoing:

*Rights of Owner if State Defaults.* In the event of failure of the State to comply with the terms of this contract with the owner, the owner will have the right, if he/she is not in default, to demand that HUD investigate. HUD will first give the State a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assume the State’s rights and obligations under this contract and meet the obligations of the State under this contract including the obligation to enter into this contract.

*Rights of State and HUD if Owner defaults under Contract.*

(1) Should the State determine that the owner is in default under this contract, the State will notify the owner, and lender, if applicable, with a copy to HUD:

- (i) Of the actions required to be taken to cure the default;
- (ii) Of the remedies to be applied by the State including specific performance under the contract, abatement of housing assistance payments and recovery of overpayments, where appropriate; and
- (iii) That, if he/she fails to cure the default, the State has the right to terminate the contract or to take other corrective action, in its discretion.

(2) If the State provided the permanent financing, HUD has an independent right to determine whether the owner is in default and to take corrective action and apply appropriate remedies, except that HUD does not have the right to terminate this

contract without proceeding in accordance with subparagraph (1) of this provision.

*Violence Against Women Act.* The contract incorporates by reference the Violence Against Women Act, set forth at 24 C.F.R. Part 5, Subpart L.

3. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

4. BREACH OF CONTRACT TERMS

Notwithstanding any other term in the contract, at a minimum, the State reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this contract, in instances where the Contractor or any of its subcontractors violate or breach any contract term. If the Contractor or any of its subcontractors violate or breach any contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

5. ACCESS TO RECORDS

The State, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Contractor which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

6. MAINTENANCE/RETENTION OF RECORDS

All records connected with this contract will be maintained in a central location and will be maintained for a period of at least six (6) years following the date of final payment and close-out of all pending matters related to this contract.

7. EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, the Contractor and Subcontractors must comply with 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

8. DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 3141-3148)

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by the State, the Contractor, or the Subcontractors must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, the Contractor and Subcontractor shall be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor and Subcontractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract or subcontract shall be conditioned upon the acceptance of the wage determination. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each Contractor or Subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor and Subcontractors shall report all suspected or reported violations to the State and the Federal awarding agency.

9. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708)

Where applicable, all contracts and subcontracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for

compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor and Subcontractors shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

10. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

11. CLEAN AIR ACT (42 U.S.C. 7401-7671q) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED

If the Contract and Subcontracts are in excess of \$150,000, the Contractor and Subcontractors shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the State and the Federal awarding agency and the Regional Office of the Environmental Protection Agency (“EPA”). Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C.6201)

12. MANDATORY STANDARDS

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the

Energy Policy and Conservation Act (42 U.S.C.6201).

13. DEBARMENT AND SUSPENSION (EXECUTIVE ORDER 12549 AND 12689)

A contract award (see 2 C.F.R. § 180.220) shall not be made to parties listed on the government-wide exclusions in the System for Award Management (“SAM”), in accordance with the OMB guidelines at 2 C.F.R Part 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Contractor, by executing this Agreement, certifies that it is not presently suspended, debarred, proposed for debarment or otherwise excluded by the federal government, and that should the Contractor become suspended, debarred, proposed for debarment or otherwise excluded by the federal government, the Contractor shall immediately notify the State.

14. BYRD ANTI-LOYBBYING AMENDMENT (31 U.S.C. 1352)

The Contractor and Subcontractors that apply or bid for an award of \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the State.

Required HUD-2516 Form

(form may be downloaded from [HUD's website](#))

Required HUD-60002 Form

(form may be downloaded from [HUD's website](#))