

THE TOWN OF SUMMERVILLE
REQUEST FOR PROPOSALS
N. Hickory Street Sidewalk
Closing Date and Time:
December 17, 2019 - 2:00 p.m.

The Town of Summerville, South Carolina is soliciting proposals from engineering firms interested in providing the surveying, design and construction documents for a new sidewalk and drainage improvements as outlined in its Community Development Block Grant # B-19-MC-45-0013 awarded from the U.S. Department of Housing and Urban Development (HUD), to be located on North Hickory Street between West Richardson Avenue and W. 5th N. St. (US HWY 78) in The Town of Summerville. The scope of the project is to construct the sidewalk on the Eastern side of North Hickory Street (left side if traveling from HWY 78 to W. Richardson Ave). The project will include the sidewalk, crosswalks, drainage improvements, and sediment and erosion control measures. The project may also include the improvement or the addition of residential driveways within the scope of the project.

SELECTION CRITERIA

1. Qualifications – up to 20 points maximum
2. Experience w/ similar projects – up to 20 points maximum
3. CDBG experience – up to 20 points maximum
4. Response to proposal – up to 20 points maximum
5. Cost of Services – up to 20 points maximum

Proposals must be submitted to: Attn: Krista Collins, Purchasing Agent, Town of Summerville, 200 South Main Street, Summerville SC, 29483 Telephone 843-851-4151, in a sealed envelope clearly marked, “**PROPOSAL**”. Proposals received after the deadline **WILL NOT BE CONSIDERED**. Submit one (1) original and three (3) copies of the proposal. The proposal does not commit the Town of Summerville to award a contract or pay any cost incurred in the preparation of proposals. The Town of Summerville reserves the right to accept or reject any or all proposals received as a result of the request, to negotiate with all qualified offerors, or to cancel in part or in its entirety, if this is in the best interest of the Town to do so.

FOR further information contact Matt Halter at the above address or 843-285-7540.

SCOPE OF WORK

The proposed engineer will be responsible for but not limited to the following:

1. **PREPARATION OF PLANS AND SPECIFICATIONS**

- a) The proposed engineer will design the new sidewalk and all appurtenances to meet the standards of The Town of Summerville, SCDOT and other regulatory agencies. The design engineer will be responsible for but not limited to the following:
 - b) Conduct all necessary field surveying.

- c) Prepare contract specifications and documents including: Notice and Instructions to Bidder. Bid form, Contract Agreement, General and Supplemental Conditions and Technical Specifications.
- d) Prepare construction drawings.
- e) Provide surveying, mapping services necessary for the acquisition of right-of-way and/or easements for sidewalk if necessary.
- f) Obtain all regulatory agency encroachment approvals, as needed.
- g) Meet with local officials and the designated grant administrator to review plans and cost estimates. Attend public meetings and conferences with The Town of Summerville.

2. **CONTRACT ADMINISTRATION**

The engineer shall provide contract administration services to include, but not be limited to:

- a) Prepare required addenda, if necessary.
- b) Attend bid opening. Analyze bids and make recommendations to the Town.
- c) Attend preconstruction conference and be prepared to answer questions regarding plans.
- d) Prepare contract documents and coordinate execution by Contractor and the Town.
- e) Check and approve necessary shop and working drawings.
- f) Provide sets of as built drawings.

TYPE OF CONTRACT

The Town intends to sign a lump sum contract with one firm for the services. To the extent that the firms choose to make joint proposals, one firm must be designated the lead firm to sign the contract and be the point of contact with The Town of Summerville. The Town reserves the right to reject any or all proposals or PROPOSAL's, to waive minor informalities and technicalities to make a selection, if any, based solely on the best interests of the Town.

PREPARATION OF PROPOSAL

All PROPOSALS should be complete and carefully worded and must convey all the information requested by the Town.

QUESTIONS

Every effort has been made to ensure that all information needed by the Firm is included herein. If a Firm finds that it cannot complete a proposal without additional information, it may submit questions, in writing, to the Town of Summerville Representative. No negotiations, decisions or actions shall be initiated by any Firm or potential firm as a result of any verbal discussion with any Town of Summerville representative or employee.

All questions in connection with this PROPOSAL shall be directed to the Town of Summerville Representative: Matt Halter, 200 South Main Street, Summerville, SC 29483, mhalter@summervillesc.gov, (843) 285-7540.

PROFESSIONAL LIABILITY COVERAGE

The firm shall submit with its proposal evidence that it has or can obtain professional liability coverage in an amount not less than one million dollars and that said coverage includes, but is not limited to the scope of work.

TIME

The selected firm shall have the preparation of plans and specifications completed and ready to submit for applicable permitting from **90 days** of the execution of the contract.

TERMINATION BY THE TOWN

Funds for this contract are payable from the Town's Community Development Block Grant (CDBG) funds and the Town's General Fund. In the event no funds or insufficient funds are appropriated and made available for payments due under this contract, then the Town shall immediately notify the firm of such occurrence, and this contract shall create no further obligation of the Town as to such current or succeeding fiscal year and shall be null and void, except as to the portions of payments herein agreed upon for funds which shall have been appropriated and budgeted. In such event, this contract shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the Town of any kind whatsoever. No right of action or damages shall accrue to the benefit of the firm as to that portion of this contract that may so terminate. The Town shall provide the successful firm with notice not less than thirty (30) days prior to the date of cancellation, if such time is available. Otherwise, prompt notice will suffice. In the event of occurrence of the circumstances described immediately above, the firm shall not prohibit or otherwise limit the State's right to pursue and contract for alternate solutions and remedies as deemed necessary by the Town for the conduct of its affairs. All provisions stated herein shall apply to any amendment or the execution of any option to extend the contract.

APPROVAL OF USE OF NAMES

The firm shall not have the right to include the Town names in its published list of customers without prior approval. With regard to news releases, only the name of the firm type and duration of contract may be used and then only with prior approval of the Town. The firm agrees not to publish or cite in any form any comments or quotes from the Town Council

members, officials or staff. The firm further agrees not to refer to award of this contract in commercial advertising in such a manner as to state or imply that the services provided are endorsed or preferred by the Town.

EMPLOYMENT OF PERSONNEL

In all hiring or employment made possible by or resulting from the contract and in accordance with 45 CFR Parts 90 and 91 (1990), the firm agrees that:

- a) There shall be no discrimination against any employee or applicant for employment because of handicap, age, race, color, religion, sex or national origin, and
- b) Affirmative action shall be taken to insure that applicants are employed, and that
- c) Employees are treated during employment without regard to their handicap, age, race, color, religion, sex, or national origin

This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The firm further agrees to give public notice in conspicuous places available to employees and applicants for employment setting forth the provisions of this section. All solicitations or advertisements for employees shall state that all qualified applicants shall receive consideration for employment without regard to handicap, age, race, color, religion, sex or national origin. All inquiries made to the firm concerning employment shall be answered without regard to handicap, age, race, color, religion, sex or national origin. All responses to inquiries made to the firm concerning employment made possible as a result of the contract shall conform to Federal, State and local regulations.

COMPLIANCE WITH CODES, ORDINANCES, INDUSTRY STANDARDS

During the term of this contract, it shall be the firm's responsibility to ensure compliance with all applicable provisions of laws, codes, ordinances, rules and regulations, tariffs, and industry standards. The firm and any and all subcontractors of the firm shall have a Town of Summerville business license before work begins.

ASSIGNMENT

No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Town.

SAFETY PRECAUTIONS

The Town assumes no responsibility with respect to accidents, illness, or claims arising out of any work undertaken with the assistance of funds paid under the contract. The firm shall take

necessary steps to insure or protect itself and its personnel. The firm agrees to comply with all applicable local, state, and federal occupational and safety acts, rules and regulations. The Town will require proof of Worker's Compensation coverage.

POLITICAL ACTIVITY

The firm shall comply with all applicable provisions of the Federal "Hatch Act" as amended.

RESTRICTIONS FOR LOBBYING

In accordance with 31 U.S.C. 1352, funds received under this contract may not be expended to pay any person or influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of any agency, 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, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant loan, or cooperative agreement. This restriction is applicable to all subcontractors and must be included in all subcontracts.

COMPLIANCE WITH FEDERAL REGULATIONS

State or Federal requirements that are more restrictive shall be followed.

AMERICANS WITH DISABILITIES ACT (ADA)

The firm shall comply with the ADA, as applicable.

DEBARMENT CERTIFICATION

The firm agrees to comply with the applicable provisions of 45 CFR Part 76 (1990).

AUDITS AND REVIEWS

The firm shall, throughout the life of the contract, participate in State and Federal audits. The firm shall provide support to the Town during any and all audits. The support shall include, but shall not be limited to, producing documentation, gathering data, preparing reports or correspondence, and assisting the Town in responding to questions.

SUBCONTRACTORS

If the firm proposes to use key professional personnel who are not employed by the firm in a full time capacity, the firm must include a resume(s) of the personnel, specifically designate what portions(s) of the project the personnel will be responsible for and what percentage, in terms of time, of the project will be performed by such personnel. The firm shall be professionally liable for the work of such personnel and shall provide assurances to the Town that such personnel will devote sufficient time, which time shall be satisfactory to the Town to the project in order to carry out properly the designated project work.



**Town of Summerville
Community Development Block Grant Program
Certification Forms**

The North Hickory Street Sidewalk Project outlined in this solicitation is being primarily funded by the U.S. Department of Housing and Urban Development through Community Development Block Grant # B-19-MC-45-0013. As such, all participants must agree to comply with certain federal regulations pertaining to the administration and execution of the solicited project.

GRANT RELATED CONDITIONS

I, _____ the undersigned, certify that _____
Print Name *Print Business Name*

Has received the "U.S. Department of Housing and Urban Development Contract Special Provision" from the Town of Summerville, and agrees to comply with all Federal regulations outlined therein as they pertain to administration and execution of the project.

Printed Name

Title

Signature

Date

The Town of Summerville's Community Development Block Grant Program is primarily funded by the U.S. Department of Housing and Urban Development. The Town of Summerville does not discriminate on the basis of age, color, religion, gender, national origin, familial status or disability in the admission or access to, or treatment or employment in its federally assisted programs or activities.

All bidders must review and fully complete the attached forms and return them as part of their bid proposal packet. **Firms who do not submit or fully complete all required forms will be disqualified from further participation.**

The awarded contract will be made based on the criteria outlined in the bid solicitation package. Funds available for project completion **will not** be made available to potential candidates during the bid solicitation period.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION
AND OTHER MATTERS RELATED TO PUBLIC TRANSACTIONS**

- (1) The prospective contractor/firm certifies to the best of its knowledge and belief, that it and its principals:
- a. Are not presently debarred, suspended, proposed for department, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
 - c. Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions terminated for cause or default.
- (2) Where the prospective contractor/firm is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name

Town of Summerville, SC
Local Government Agency

Title

Firm/Contractor

Project Name/Title

Street Address

City, State, Zip Code

Signature

Date

STATISTICAL INFORMATION

The information reported on this page is for statistical purposes only. All information will remain confidential and will be used only for reporting information **required** by the U.S. Department of Housing and Urban Development.

Note: To qualify as a minority contractor, or female-owned business, the business must be **owned by at least 51%** minority or female persons.

Please indicate below the information that is applicable to the **ownership** of the business:

Race

- | | |
|--------------------------------------------------------|-----------------------------------------------------------------|
| <input type="checkbox"/> White | <input type="checkbox"/> Native Hawaiian/Other Pacific Islander |
| <input type="checkbox"/> Black/African American | <input type="checkbox"/> Other Race |
| <input type="checkbox"/> Asian | <input type="checkbox"/> Two or More Races |
| <input type="checkbox"/> American Indian/Alaska Native | |

Ethnicity

- Hispanic
- Non-Hispanic

Sex

- Male
- Female

Other

- Minority
- Disabled
- Veteran
- N/A

****Information provided on this form will in no way be used to provide preference to qualified bidders during bid solicitation review or awarding of the project contract.****

OTHER GRANT RELATED CONDITIONS

I, _____ the undersigned, certify that _____
Print Name *Print Business Name*

agrees to comply with the following "Grant Related Conditions," as they pertain to administration and execution of the solicited project:

DAVIS BACON AND RELATED ACTS

The Contractor certifies that it will comply with all requirements and regulations of Federal Labor Standards Provisions including Davis Bacon and Related Acts (DBRA) and will require full compliance with DBRA from any of its subcontractors. DBRA requires all contractors and subcontractors performing work on federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are the most current, as determined by the Secretary of Labor, for inclusion in this DBRA covered contract. The Department of Labor Wage Determination applicable to this project is SC31 (Building Construction Type) for Dorchester County and should be posted at the job site in a location easily accessible to all project workers. Applicable Wage Determination can be viewed at: <http://www.wdol.gov/dba.aspx>.

Furthermore, in order to assist the Town with meeting the requirements of the Community Development Block Grant program, **the Contractor agrees to submit signed copies of each of its and its subcontractor's weekly certified payrolls, via form WH-347 or equivalent, to the Town's Grants Administrator each week during the duration of the project contract. The Town reserves the right to withhold invoice payments to the Contractor for failure to submit certified payrolls and any other DBRA documentation that may be requested.** The Contractor also certifies that it will make project workers available for interviews by Town of Summerville staff in order to verify that the Contractor is complying with the Federal Davis-Bacon prevailing wage requirements.

All Federal Labor Standards Provisions applicable to this project can be viewed at: <http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>.

A guide on Federal Labor Standards related to CDBG projects and Davis-Bacon and Related Acts can be found here: <https://www.hudexchange.info/resources/documents/Making-Davis-Bacon-Work-Contractors-Guide-Prevailing-Wage-Requirements.pdf>

SUBCONTRACTORS

If the Contractor proposes to use personnel who are not employed by the Contractor in a full time capacity, the Contractor must specifically designate what portions(s) of the project the personnel will be responsible for and what percentage, in terms of time, of the project will be

performed by such personnel. The Contractor shall be professionally liable for the work of such personnel and shall provide assurances to the Town that such personnel will devote sufficient time, to properly carry out the designated project work. All subcontracts must be approved by the Town to insure that they are not debarred or suspended by the Federal Government.

AUDITS AND REVIEWS

At the Town's request, the Contractor shall, throughout the life of the contract and one year subsequent to the completion of the contract, participate in any Federal audits or monitoring visits. The Contractor's support shall include, but not be limited to, producing documentation, gathering data, preparing reports or correspondence, and assisting the Town in responding to questions associated with the contracted project.

EQUAL EMPLOYMENT OPPORTUNITY

In carrying out the scope of work outlined in this solicitation, the Contractor shall not discriminate against any employee or applicant for employment based on race, color, religion, age, sex, familial status, disability or national origin.

UTILIZATION OF SMALL AND MINORITY FIRMS

It is national policy to award a fair share of contracts to small and minority and women's owned businesses. Accordingly, affirmative steps must be taken to assure that small, minority and women owned businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- (1) Including qualified small and minority businesses on solicitation lists;
- (2) Assuring that small, minority and women owned businesses are solicited whenever they are potential sources;
- (3) Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, minority and women owned businesses' participation;
- (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses; and
- (5) Using the services and assistance of the Small Business Administration, the Governor's Office of Small and Minority Business Assistance, the

SECTION 3, COMPLIANCE AND PROVISION OF TRAINING, EMPLOYMENT, AND BUSINESS OPPORTUNITIES

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 USC 1701u. 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.

The parties to this said 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.

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.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

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.

The contractor agrees to submit such reports as required to document compliance with Part 135. Noncompliance with the 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.

For a list of registered minority-owned businesses please visit:

<https://portalapps.hud.gov/Sec3BusReg/BRegistry/SearchBusiness>

AMERICANS WITH DISABILITIES ACT (ADA)

The Contractor certifies that it will comply with all requirements of Title I of the Americans with Disabilities Act of 1990, as applicable.

POLITICAL ACTIVITY

The Contractor shall comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7321-7326) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

RESTRICTIONS FOR LOBBYING

In accordance with 31 U.S.C. 1352, funds received under this contract may not be expended to pay any person, or influence, or attempt to influence, an officer, or employee of any agency, a member of Congress, an officer or employee of any agency, 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, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant loan, or cooperative agreement. This restriction is applicable to all subcontractors and must be included in all subcontracts.

Printed Name

Title

Signature

Date

U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

CONTRACT SPECIAL PROVISIONS

1. **Limitation of Liability:** The contractor will not assert in any legal action by claim or defense, or take the position in any administrative or legal procedures that he is an agent or employee of the owner. This provision is not applicable to contracts for CDBG administration services where the contractor is a Council of Government or a Regional Planning Agency.
2. **Ownership:** Ownership of all real or personal property, acquired in whole or in part with CDBG funds for use on this project, shall be vested in the unit of local government. When the unit of local government determines that the property is no longer required for the purposes of this project, the unit of local government must notify Grants Administration and obtain approval for disposition of the property in accordance with applicable guidelines.
3. **Agreement/Contract:** If any provision in this agreement/contract shall be held to be invalid or unenforceable, the remaining portions shall remain in effect. In the event such invalid or unenforceable provision is considered an essential element of this agreement/contract, the parties shall promptly negotiate a replacement provision, which addresses the intent of such provision.

The failure of either party to insist upon strict performance of any terms, conditions and covenants herein set forth shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

4. **Federal, State and local laws, ordinances and codes** are subject to change from time to time as they are promulgated. The contractor shall be notified in writing of any such changes when they occur and they shall be incorporated in writing to this contract/agreement upon concurrence by both parties unless such changes are considered to have an essential impact upon the intent of this agreement/contract and then they shall be incorporated upon notification to the contractor.
5. **Termination for Convenience:** This agreement may be terminated for convenience in accordance with 24 CFR, 85.44.
6. **Amendments:** Any changes to this contract affecting the scope of work of the project must be approved, in writing, by the Owner and Contractor and shall be incorporated in writing to this contract. Any amendments exceeding 10% or \$10,000 (whichever is less) of the original contract price must have written approval by Grants Administration prior to execution.
7. **Copyright:** Except as otherwise provided in the terms and conditions of this contract, the contractor paid through this contract is free to copyright any books, publications or other copyrightable materials developed in the course of and under this contract. However, the federal awarding agency reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, for federal government purposes:
 - (a) the copyright in any work developed under this contract; and

- (b) any rights of copyright to which a subcontractor purchases ownership with grant support.

The Federal Government's rights identified above must be conveyed to the publisher and the language of the publisher's release form must insure the preservation of these rights.

- 8. **Terms and Conditions:** The Federal Government reserves the right to add or delete terms and conditions of this contract as may be required by revisions and additions to changes in the requirements, regulations, and laws governing the Community Development Block Grant Program.
- 9. **Reporting Requirements:** The Contractor agrees to complete and submit all reports, in such form and according to such schedule, as may be required by the Federal Government.
- 10. **Sanctions:** If the Contractor fails or refuses to comply with the provisions set forth herein, the Federal Government or Owner may take any or all of the following sanctions: cancel, terminate or suspend in whole or in any part the contract, or refrain from extending any further funds to the Contractor until such time as the contractor is in full compliance.
- 11. **Applicable Law:** In addition to the applicable Federal Laws and Regulations, this contract is also made under and shall be construed in accordance with the laws of the State of South Carolina. By execution of this contract, the contractor agrees to submit to the jurisdiction of the State of South Carolina for all matters arising or to arise hereunder, including but not limited to performance of said contract and payment of all licenses and taxes of whatever kind or nature applicable hereto.
- 12. **Compliance with Air and Water Acts:** Applicable to construction contracts and related subcontracts exceeding \$100,000: This contract is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect to 40 CFR Part 15, as amended from time to time.
 - (1) A stipulation by the contractor or subcontractor that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities, issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
 - (2) Agreement by the Contractor to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 USC 1857c-8-0 and section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said section 114 and 308, and all regulations and guidelines issued thereunder.
 - (3) A stipulation that as a condition of award of contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract under consideration is to be listed on the EPA list of Violating Facilities.
 - (4) Agreement by the Contractor that he will include or cause to be included the criteria and requirements in paragraph (1) through (4) of this agreement, in every nonexempt subcontract and requiring that the contractor will take such action as the government may direct as a means of enforcing such provisions.

In no event shall any amount of assistance provided under this agreement be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

13. **Maintenance of Records:** Records for non-expendable property purchased totally or partially with Federal funds must be retained for five years after final close-out. All other pertinent contract records including financial records, supporting documents and statistical records shall be retained for a minimum of five years after the final close-out report. However, if any litigation, claim, or audit is started before the expiration of the five year period, then records must be retained for five years after the litigation, claim or audit is resolved.
14. **Subcontracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Areas:** It is national policy to award a fair share of contracts to small and minority and women's owned businesses. Accordingly, affirmative steps must be taken to assure that small, minority and women owned businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
 - (1) Including qualified small and minority businesses on solicitation lists;
 - (2) Assuring that small, minority and women owned businesses are solicited whenever they are potential sources;
 - (3) Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, minority and women owned businesses' participation;
 - (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses; and
 - (5) Using the services and assistance of the Small Business Administration, the Governor's Office of Small and Minority Business Assistance, the Department of Commerce and the Community Services Administration as required.
15. **Confidential Information:** Any reports, information, data, etc., given to, prepared by, or assembled by the Contractor under this contract, which the Agency requests to be kept confidential, shall not be made available to any individual or organization by the Contractor without prior written approval of the Agency.
16. **Access to Records:** Records with respect to all matters covered by this contract shall be made available for audit and inspection by the agency, the grantor or their representatives.
17. **Prime Contractor Responsibilities:** The Contractor is required to assume sole responsibility for the complete effort and enforcement of laws and regulations under this contract. The owner will consider the Contractor to be the sole point of contact with regard to contractual matters.
18. **Subcontracting:** If any part of the work covered by this contract is to be subcontracted, the Contractor shall identify the subcontracting organization and the contractual arrangements made therewith to the owner. All subcontracts must be approved by the owner to insure they are not debarred or suspended by the Federal Government and to insure the owner understands the arrangements.

19. **Legal Services:** No attorney-at-law shall be engaged through the use of any funds provided under this contract in suits against the State, Local Public Body or any political subdivision.
20. **Political Activity:** None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or otherwise in violation of the provisions of the "Hatch" Act.
21. **Reporting of Fraudulent Activity:** If at any time during the term of this contract anyone has reason to believe by whatever means that, under this or any other program administered by Grants Administration a recipient of funds has improperly or fraudulently applied for or received benefits, monies or services pursuant to this or any other contract, such information shall be reported to the appropriate authorities.
22. **Age Discrimination:** In accordance with 45 CFR, parts 90 and 91, the Contractor agrees there shall be no bias or age discrimination as to benefits and participation under this contract.
23. **Section 109 of the Housing and Community Development Act of 1974:** No person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
24. **Section 3, Compliance and Provision of Training, Employment and Business Opportunities:** 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 USC 1701u. 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.

The parties to this said 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.

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.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or

knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

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.

The contractor agrees to submit such reports as required to document compliance with Part 135. Noncompliance with the 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.

25. **Section 504 of the Rehabilitation Act of 1973, as amended:** The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.
26. **Lead-Based Paint:** The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. Any grants or loans made by the Grantee for the rehabilitation of residential structures with assistance provided under this Agreement shall be made subject to the provisions for the elimination of lead-base paint hazards under subpart B of said regulations, and the Grantee shall be responsible for the inspections and certifications required under section 35.14(f) thereof.
27. **Debarment Certification:** The contractor must comply with Federal Debarment and Suspension regulations prior to entering into a financial agreement for any transaction as outlined below.
 - (a) Any procurement contract for goods and services, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold (which is \$25,000 and is cumulative amount from all federal funding sources).
 - (b) Any procurement contract for goods and services, regardless of amount, under which the Contractor will have a critical influence on or substantive control over the transaction.
28. **Equal Employment Opportunity:** In carrying out the program, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor must take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Contractor

shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for project or program.

The Contractor will, in all solicitations or advertisements for employees by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

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 State advising the said labor union or workers' representatives of the contractor's commitment under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the regulating Government.

The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the regulating Government, or pursuant thereto, and will permit access to his books, records, and accounts by HUD for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations, or order of the regulating Government, or as otherwise provided by law.

The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the regulating Government issued pursuant to section 204 of Executive Order 11246 of September 25, 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 the regulating Government may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the regulating Government the contractor may request the regulating Government to enter into such litigation to protect the interest of the regulating Government.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Grantee so participating is a local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

29. **Federal Labor Standards Provisions:** U.S. Department of Housing and Urban Development, Office of Labor Relations form HUD-4010 (07/2003) ref. Handbook 1344.1 (Applicable to construction contracts in excess of \$2,000 or residential rehabilitation contracts involving more than eight units. These regulations must be complied with or sanctions will be instituted.)

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often 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 thereto and made a part thereof, 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 I(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 particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 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 of the time actually work 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 an 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.

(ii) (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 and fringe benefits therefore only when the following criteria have been met:

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

(b) If the contractor and the laborers and mechanics to be employed I 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, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so

advise HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(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 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. (Approved by the Office of Management and Budget under OMB Control Number 1214-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) 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.

(iv) 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. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. 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 Federal-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension or 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 an on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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 (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices and trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) the contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime 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 1215-0129.)

(b) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete’

(2) The 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;

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

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for 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 on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause

include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provided in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. 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 laborer or mechanic in any workweek in which he or she 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 clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violations of the clause set forth in subparagraph (1) of this paragraph, 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 the clause set forth in subparagraph (1) of this paragraph.

(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 other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et. seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

30. **South Carolina Illegal Immigration Reform Act:** Recipients are required to comply with the South Carolina Illegal Immigration Reform Act (signed June 4, 2008) requiring verification of lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in U.S.C. Section 1611.

31. **Conflicts of Interest and Ethical Standards, South Carolina Consolidated Procurement Code:**

(a) **Official Position Not To Be Used For Financial Gain SECTION 2:** Section 8-13-410 of the 1976 Code is amended to read:

(1) "No public official or public employee shall use his official position or office to obtain financial gain for himself.

(2) No public official or public employee shall participate directly or indirectly in a procurement when he has knowledge or notice that:

(a) he or any business with which he is associated has financial interest pertaining to the procurement;

- (b) any other person, business, or organization with whom he or a member of his household is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- (3) Where a public official or public employee or any member of his household holds a financial interest in a blind trust, he shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the appropriate supervisory office."
- (b) **Breach of Ethical Standards SECTION 3:** Section 8-13-420 of the 1976 Code is amended by adding the following paragraph at the end:

"It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. The prohibition against gratuities and kickbacks prescribed in this paragraph shall be conspicuously set forth in every contract and solicitation thereof."

- (c) **Breach Of Ethical Standards, Administrative Remedies SECTION 4:** The 1976 Code is amended by adding:

Section 8-13-500

- (1) Except as may be permitted by regulations of the State Ethics Commission, it shall be a breach of ethical standards for any public employee or public official who is participating directly in the procurement process to resign and accept employment with any person contracting with the governmental body with whom the public employee or public official is associated.
- (2) No person shall use a former public employee or public official knowingly to act as principal or as an agent for anyone other than the State or other governmental entity with whom he is associated in connection with any judicial or other proceeding, application, request for ruling, or other determination, contract, claim or charge or controversy in which the public employee or public official participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while such a public employee or public official where the State or other governmental entity is a party or has a direct and substantial interest.
- (3) It shall be a breach of ethical standards for a business, in which a public employee or public official has a financial interest, knowingly to act as a principal or as an agent for anyone other than the state or other governmental entity with which he is associated in connection with any contract, claim or controversy, or any judicial proceeding in which the public employee or public official either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the official's or employee's official responsibility, where the state or governmental entity is a party or has a direct and substantial interest.

Section 8-13-510

- (1) The provisions of this section and Sections 8-13-530 shall be in addition to all other civil and administrative remedies against public employees or public officials which are provided by law.
- (2) In addition to existing remedies for breach of the ethical standards of this chapter or regulations promulgated hereunder, the State Ethics Commission may impose an oral or written warning or reprimand.
- (3) The value of anything received by a public employee or public official in breach of ethical standards of this chapter or regulations promulgated hereunder shall be recoverable by the State or other governmental entity in an action by the Attorney General against anyone benefiting from such violations.
- (4) Before a public employee's employment or a public official's association with the State or governmental entity is terminated for a violation of the provisions of this chapter, notice and an opportunity for a hearing shall be provided to the public official or public employee.

Section 8-13-520

- (1) The provisions of this Section and Sections 8-13-510 and 8-13-530 shall be in addition to all other civil and administrative remedies against nonpublic employees or officials which are provided by law.
- (2) In addition to existing remedies for breach of the ethical standards of this chapter or regulations promulgated hereunder, the State Ethics Commission may impose against a nonpublic employee or official any one or more of the following:
 - (a) written warnings or reprimands;
 - (b) debarment or suspension from being a contractor or subcontractor under public contracts. Actions under this section may be appealed to the appropriate administrative review panel, as authorized under section 11-35-4410, within ten days of the actual notice of debarment or suspension to the affected party.
- (3) The value of anything transferred in breach of the ethical standards of this chapter or regulations promulgated hereunder by a nonpublic employee or official shall be recoverable by the State or other governmental entity involved in any action by the Attorney General against anyone benefiting from such violations.

Section 8-13-530

- (1) "The value of anything transferred or received in breach of the ethical standards of this chapter or regulations promulgated hereunder by a public employee, public official, or nonpublic employee or official may be recovered from the public employee, public official, or nonpublic employee or official.
- (2) Upon showing that a subcontractor in connection with the award of a subcontract or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the State or governmental entity and shall be recoverable hereunder from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties."