

# **XI. SPECIAL CONDITIONS**

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**1. PROJECT SITE**

The project work shall be performed in the location shown on the Drawings.

**2. TIME FOR COMPLETION**

The work shall commence on the date stipulated in the Notice to Proceed written to the Contractor and shall be fully completed within **912** consecutive calendar days; following the schedule required under Section 12, Completion Schedule, of these Special Conditions.

**3. LIQUIDATED DAMAGES**

If the Contractor fails to complete the work in accordance with the Schedule required under Section 12 of these Special Conditions within the contract time or extension of time granted by the PHA, or his Authorized Representative, then the Contractor and his sureties shall pay to the PHA the amount of \$2,000.00 as liquidated damages for each calendar day that the Contractor shall be in default after the time of completion required in the contract documents.

**4. COMMUNICATIONS**

- (a) All notices, demands, requests, instructions, approvals, proposals and claims shall be made in writing.
- (b) Any notice to or demand upon the Contract shall be sufficiently given if delivered at the office of the Contractor stated on the signature page of the Contract or at such other office as he may from time to time designate in writing to the PHA, or his Authorized Representative, or deposited in the United States Mail in a sealed, postage prepaid envelope, or if by hand or messenger delivered with charges prepaid to any company for transmission, in each case addressed to such office.
- (c) All papers and documents required to be delivered to the PHA, or Authorized Representative, shall, unless otherwise specified in writing to the Contractor, be delivered to the Contracting Officer of the PHA and any notice to or demand upon the PHA shall

be sufficiently given if so delivered, or deposited in the United States Mail in a sealed postage-prepaid envelope or delivered with charges prepaid to any company for transmission to the PHA, at such address or to such other address as the PHA, may subsequently specify in writing to the Contractor for such purpose.

- (d) Any such notice shall be deemed to have been given as of the time of actual delivery or in the case of mailing when the same should have been received in due course of post, or in the case of messengers, at the time of actual receipt, as the case may be.

**5. SIGNS**

- (a) Subject to prior approval of the PHA, as to size, design, type, and location, and to local regulations, the Contractor and his subcontractors may erect temporary signs for purposes of identification and controlling traffic. The Contractor shall furnish, erect and maintain such signs as may be required by Safety Regulations and as necessary to safeguard life and property.
- (b) The Contractor shall construct on the site of the project at locations to be designated by the PHA two signs of the dimensions shown on the attached form.
- (c) The Contractor shall maintain the project sign(s) in good conditions satisfactory to the PHA during the construction period and upon completion of the Contract Work or when directed, shall remove, destroy and dispose it off site unless otherwise directed by the PHA.

**6. JOB OFFICES**

The Contractor shall furnish, install and maintain adequate and secure facilities (with iron grilles, handicapped access facilities and alarm system) in the project site with janitorial, sanitary, potable water, electrical services and handicapped accessible usable spaces and equipment,

during the construction of the Project, for the exclusive use of PRPHA, HUD and/or the Inspection Staff.

The offices shall have not less space than:

Resident Engineer office	144 square feet
Assistant Engineer office	144 square feet
Secretary area	144 square feet
Inspectors	144 square feet
Relocation Office	144 square feet
Kitchenette area	80 square feet
Storage area	20 square feet
Meeting room	240 square feet

The offices shall have not less than:

- Five (5) 12,000 BTUs individual office air conditioners: Two (2) for Engineers; Two (2) for Relocation and Inspectors office; One (1) for Secretary Office and One (1) 18,000 BTUs for conference room. If necessary, one (1) 18,000 BTUs for open spaces.
- One (1) men Bathroom facility and One (1) lady bathroom facility with medicine cabinet, wall lavatory, toilet, paper holder, 2 wall hooks and wall lamp/outlet and appropriate ventilation, for their exclusive use.
- The number of doors (with adequate hardware) and windows shall be adequate to all spaces. All areas shall have roof lightning and shall be ventilated with air conditioning and natural ventilation.

The Contractor shall provide the following new equipment:

- a. One (1) swivel secretary chair and three (3) fabric guest arm chairs

- b. Six (6) office desks with one (1) executive chair and two (2) arm chairs each, and one (1) secretary type "L" pedestal office desk.
- c. Two (2), four (4) lateral drawers, lockable legal size files
- d. Two (2) 24 holders Plans racks to accommodate one (1) set of drawings in each.
- e. One (1) Conference table for fourteen (14) people with fourteen (14) folding padded chairs
- f. Two (2) tables, one (1) to place project drawings and one (1) to use as work area for Inspector and Assistant Resident Engineer.
- g. One (1) legal size 5-drawer metal file, lockable for Resident Engineer.
- h. Two (2) separate telephone lines with equipment for Inspection Office.
- i. Two (2) separate telephone extensions with equipment for Inspection office.
- j. Internet Account with DSL access and line service dedicated.
- k. Battery back-up.
- l. One (1) Desktop PC and Two (2) Laptop with leather bag- Intel Core i5 3.10 GHz, 4GB DDR3, 500 GB HDD, DVDRW, Keyboard/Mouse, 100/1000 Ethernet, Wi-Fi, Windows 7 Professional 64-Bit or latest version, 15.6" Display for the laptop, 23" Display monitor 1920 x 1080 for desktop, Microsoft Office 2010 for Windows or latest version, Acrobat Adobe latest version, Primavera Enterprise and Expedition latest version. Including CD and each corresponding license for each computer.
- m. One (1) all-in-one (laser flatbed automatic feeder printer, fax, scanner and copier) machine with capacity to make copies in 8.5" x 11", 8.5" x 14" and 11" x 17" paper. Print Speed of 20ppm, Capacity of 10,000 pages per month, 1200 x 1200 dpi, USB port and Wi-Fi, color plus Ethernet connection.

- n. One (1) water fountain (potable water supply/replenish included).
- o. Kitchenette must include:
  - Single S/S sink with shelving, water and sewage facilities.
  - 15 cu. ft refrigerator (no frost)
  - 12 cups coffee maker with supplies of coffee, filters, UHT milk, sugar, cups and straws, etc., for the duration of the project.
  - Microwave oven

Contractor shall provide an immediate substitute for any equipment that is damaged or stolen.

Contractor shall provide office signs.

Contractor shall provide, maintain and pay electricity, water, telephone service and sewage facilities through the duration of the contract.

Contractor shall provide toner and cartridges replacement for the all-in-one (printer, fax, scanner and copier) machine whenever they are necessary.

Contractor shall provide maintenance including: daily janitorial services, supply sanitary paper, towel paper, soap, detergent, sponges, etc.

Contractor shall provide interior iron grille protection for windows and doors, including alarm system for protection of equipment and documents.

Prior to the erection of the office, the Contractor shall submit a sketch of the proposed structure for approval of Inspection Staff.

For the Relocation Personnel, the Contractor shall provide the following:

- i. The office area shall have the following facilities, to include equipment:
  - Two (2) new metal files 5 drawer lockable legal size
  - Storage area and shelving

- ii. Contractor shall provide and pay electricity, water, telephone service and sewage facilities during the duration of the contract.
- iii. Contractor shall provide daily janitorial services.
- iv. Contractor shall provide office signs for both construction and relocation
- v. Contractor shall provide an immediate substitute for any equipment that is damaged or stolen.

Upon completion of the Project or as directed by the Owner or Authorized Representative, the Contractor shall remove all such temporary structures and facilities from the site, same to become his property, and leave the premises in the conditions required by the contract, to include restoration of grounds, structures and utilities to the satisfaction of the Owner or his Authorized Representative.

All the above mentioned office & equipment shall remain property of the Contractor upon completion of the project and it shall be removed from the site unless prior request is made by PRPHA or designated representative except items l and m, which shall be delivered to PRPHA.

**7. MINIMUM RATES OF PAY (Attached Copies)**

- (a) Statements or Notices in Spanish and English of the wage rates shown herein shall be posted by the Contractor at appropriate conspicuous places at the site of the project where they may be easily seen by all workers.

The minimum wage rates have been determined in accordance with the provisions contained in the General Conditions, form HUD-5370, latest edition, and not less than the wages listed herein shall be paid to the following trades and occupations, in accordance with the applicable U. S. Department of Labor Determination. See pages 8 and 9.

- (b) Bidders and/or Contractors are cautioned to contact the nearest office of the Wage-Hour and Public Contracts Division - U. S. Department of labor, if they have any questions on application of the Fair Labor Standards Act (ELSA). See also 29 CFR Part 672.

**8. STANDARDS CITED**

Whenever and wherever in the plans and specifications a reference is made to national standards, such as Federal Specifications, ASTM Standards, A.W.W.A. Standards, or the like, it shall be understood and agreed that such references are to the basic standards only and that revised editions of such standards in effect at the date of advertising for bids shall be applicable to this contract and incorporated by reference as if incorporated herein.

**9. ADDITIONAL DISPOSITIONS TO THE GENERAL CONDITIONS**

**9.1 GENERAL RESPONSIBILITIES OF CONTRACTOR**

- (a) Except as otherwise specifically stated in this Contract, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, heat, power, transportation, superintendence, temporary construction of every nature required, taxes legally collectible because of the work, all permits as required by state or municipal governments, and all other services and facilities of every nature whatsoever necessary to execute the work to be done under the Contract and deliver it complete and usable in every aspect within the specified time of construction.
- (b) The Contractor shall use his best efforts to complete the Contract efficiently and economically within the least number of changes as possible and consistent with sound construction practices. He shall recommend, subject to approval, to the Owner and his Authorized Representative changes promoting economy or practices tending to produce more sound construction.
- (c) The Contractor shall have on the work at all times a competent Superintendent, who shall be a licensed Engineer (PE) or Architect, experienced in construction work, whose qualifications shall be satisfactory to the Contracting Officer or his

representatives. The Engineer or Architect shall be invested with authority to act for the Contractor on all matters that may arise during the prosecution of the work. However, this provision may not apply when the Contractor himself is a recognized, licensed experienced engineer (PE) or architect devoting his entire time and attention at the site to the superintendence of the work. The Contractor shall also provide an adequate staff for the proper coordination and expedition of the work. The Contractor shall, before commencing operations, submit to the Contracting Officer the name and license copy of the Engineer or Architect designated to supervise the work.

- (d) The Contractor shall lie out his own work and be responsible for all lines, locations, elevations, dimensions, and the finished grades of the work performed by him. He must verify the figures shown on the drawings and any preparatory work done by others, and will be held responsible for any errors resulting from his failure to do so.
- (e) The electrical construction shall be coordinated follows:
  - 1. The Contractor shall make all necessary provisions to perform the electrical demolition or construction works as per construction schedule.
  - 2. A close coordination is required between the contractor and PREPA's area Engineer.
  - 3. The Contractor has to include on his estimate all the works and coordination as explained before.
  - 4. The Contractor has to study all details and conditions existing on the field including but not limited to PREPA's actual point of connection, routing of electrical service (actual and proposed), physical obstructions, and existing

and new underground installations (sewer, manholes, etc.). No change orders will be acceptable due to the previously mentioned situations after a final estimate is submitted and approved.

5. The Contractor is responsible to coordinate with PREPA work can proceed to maintain uninterrupted electrical service for Los Alamos Court Project not matter if it is from the existing or new electrical point of connection.
6. The contractor is responsible for all the PREPA contribution payments to provide the electrical services to the Los Alamos Court and for Certifications and inspections.
7. The Contractor is responsible for the removal and disposal of existing poles, transformers, meter banks, and all the equipment related to the old electrical system.
8. The Contractor shall have a video and photos of the existing conditions of the project area and shall maintain a perimeter fence during the construction or demolition and recycling activities.

## **9.2 FITTING AND COORDINATION OF THE WORK**

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or material men and suppliers engaged upon the work. He shall be prepared to guarantee to each of his subcontractors the dimensions which they may require for the proper fitting of their work and shall do, or cause his agents to do, all cutting, fitting, adjusting, and patching necessary to make several parts of the work come together properly and to fit the work to receive or be received by, that of other contractors or subcontractors.

## **9.3 MUTUAL RESPONSIBILITY OF CONTRACTORS OR SUBCONTRACTORS**

If, through acts or neglect on the part of the Contractor, any other contractor or subcontractor shall suffer loss or damages on the work, the Contractor agrees to use his best efforts to settle with such other contractor or subcontractor. If such other contractor or subcontractor shall assert any claim against the PHA on account of any damage alleged or claimed to have been so sustained, the PHA shall notify the Contractor, who shall defend at his own expense any suit based upon such claim, and if any judgment or claims against the PHA shall be allowed, the Contractor shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith.

**9.4 BREAKDOWN, PROGRESS SCHEDULE AND PERIODICAL ESTIMATES**

- (a) For the purpose of preparing an acceptable progress schedule, and as a basis upon which partial payments to the Contractor may be authorized, not later than fifteen (15) days after execution of the Contract, the Contractor shall prepare and furnish, on forms to be supplied by the PHA, a detailed estimate, (herein termed "breakdown"), giving a complete breakdown of his Contract Price, so arranged and itemized as to meet the approval of the Administration and of HUD.
- (b) Upon approval of the Breakdown, the Contractor shall, without delay, submit for approval in like manner a carefully considered Progress Schedule, prepared in accordance with a specimen form and instructions supplied by the PHA showing the proposed dates of starting and completing each of the various branches of the work, the anticipated monthly payments to become due the Contractor, and the accumulated percent of progress each month. This chart shall correspond to the major subdivisions of the approved Breakdown and incorporate information taken there from as required. The Contractor shall also furnish at this time the CPM.

- (c) In order to receive partial payments as the work progresses, the Contractor shall submit, on HUD forms supplied by the PHA, Periodical Estimates showing the value of the work performed each month, based upon the items appearing in the approved Breakdown. Such estimates must be submitted not later than ten (10) calendar days in advance of the date set for payment, and are subject to correction and revisions as may be required or needed. In final form, they must bear the certifications called for by the forms before any payment may be made.
- (d) The values employed in making up the Breakdown and Progress Schedules are for the purpose of making partial payments and shall not be taken as a basis for additions to, or deductions from, the contract price.
- (e) At the time of submitting his Progress Schedules the Contractor shall file also his "General Plan of Operations" showing concisely the manner in which he proposes to carry out the work on the site in accordance with plans and specifications. Any change to that originally established in drawings or specifications must have the approval of the PHA.

#### **9.5 MATERIALS ON SITE OR STORAGE**

Material on site shall be allowed according to the document named "**Procedures and Requirements for Material On Site**", included as Attachment.

#### **9.6 CLAIMS FOR EXTRA COST**

- (a) If the Contractor claims that any instructions by drawings or otherwise involve extra cost or extension of time, he shall, within ten (10) calendar days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his claim in writing describing in detail the basis of his claim and

his right for an adjustment under such clause. No such claim shall be valid unless so made.

- (b) Claims for additional compensation for extra work, due to alleged errors in spot elevations, contour lines, or bench marks, will not be recognized unless accompanied with details and evidence showing that errors exist which resulted, or would result, in handling more material or performing more work, than would be reasonably estimated from the plans and topographical maps issued.
- (c) Any discrepancies which may be discovered between actual conditions and those represented by the topographical maps and plans shall be reported to the PHA at once, and work shall not proceed, except at the Contractor's risk, until written instructions have been received by him from the PHA.
- (d) If, on the basis of the available evidence, the PHA determines that an adjustment of the Contract Price or time is justifiable, the procedure shall then be as provided for "Changes in the Work".
- (e) By execution of this Contract the Contractor warrants that he has visited the site of the proposed work and has fully acquainted himself with the conditions there existing relating to construction and labor, and that he fully understands the facilities, difficulties, and restrictions attending the execution of the work under the Contract. The Contractor further warrants that by execution of this Contract his failure when he was bidding on this Contract to receive or examine any form, instrument or document, or to visit the site and acquaint himself with conditions there existing, in no way relieves him from any obligation under the Contract and the Contractor agrees that the PHA shall be justified in rejecting any claim based on facts regarding which he should have been on notice as a result thereof.

- (f) The Contractor is notified that once he receives a notice of intent for a change order from the PHA representative he has seven (7) calendar days to present his proposal and detailed Breakdown of Costs. The Administration shall evaluate said proposal and negotiate the change order or drop the negotiation in fifteen (15) calendar days after the letter of intent.
- (g) In case of execution of additional work, as a Change Order, by the Contractor, the amount to be paid to him shall be the cost of labor, equipment, materials, insurance, and taxes and a 15% to cover his indirect cost and profit. When the work is performed by a subcontractor the amount to be paid shall be the cost of labor, equipment, materials and taxes plus 10% to cover indirect costs and profit of the subcontractor. An amount equivalent to 10% shall also be paid to the General Contractor to cover his indirect costs and profit.
- (h) No Damages for Delay shall be paid for delays caused by third parties.

**9.7 RIGHT OF THE ADMINISTRATION TO TERMINATE CONTRACT**

If the Contractor should be adjudged a bankruptcy, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payments to his employees or to his subcontractors, or persistently disregard instructions of the PHA or A/E or fail to observe or perform the provisions of the Contract, or otherwise be guilty of a substantial violation of any provision of the Contract, then the PHA may by at least five calendar days prior written notice to the Contractor, without prejudice to any rights or remedies of the PHA terminate the Contractor's right to proceed with the work. In such event, the PHA may take over and prosecute the work to

completion, by contract or otherwise, and the Contractor and his Sureties shall be liable to the PHA for any and all excess cost occasioned the PHA thereby, including but not limited to excess cost of construction, administrative expenses, interests, inspection costs, fees for HUD services and loss of rent. In any such case, the PHA may take possession of and utilize in completing the work such materials, appliances, equipment, and plants as may be on the site of the work and necessary therefore. The foregoing provisions are in addition to, and not in limitation of, the rights of the PHA under any other provisions of the Contract.

#### **9.8 OWNERSHIP OF DRAWINGS AND SPECIFICATIONS**

Except the Contractor's executed set, all drawings and Specification are and remain the property of the PHA. Such Drawings and Specifications are not to be used on other work, and those sets in usable conditions shall be returned to the PHA, upon request, at the completion or cessation of the work or termination of the Contract.

#### **9.9 USE OF PREMISES**

- (a) The Contractor shall confine his apparatus, his storage of materials, and construction operations to the limits described and permitted by ordinances or permits, or as may be directed by the PHA and shall not unreasonably encumber the premises with his materials.
- (b) The Contractor shall not load any structure or permit any part thereof to be loaded to such extent as to endanger its safety.
- (c) The Contractor shall comply with and enforce any instructions of the PHA, or local laws regarding signs, advertising, fire control, danger signals, barricades, safety and smoking. In the event the contractor fails to comply with any of the above written notice shall be given. If corrections are not made in a reasonable

time, the PHA has the authority to halt construction. Any delays will be responsibility of the contractor. No time extensions will be allowed.

**9.10 USE OF FACILITIES**

The Contractor may use in the course of, for and in connection with the work of this contract, any permanent facilities (except those elsewhere mentioned in these Specifications) that he has installed or will install, provided that the Contractor has previously obtained a written authorization from the PHA but any facilities so used shall be turned over to the PHA in the original conditions at the time required by the Specifications.

**9.11 REMOVAL OF DEBRIS, CLEANING, ETC.**

The Contractor shall periodically or as directed during the progress of the work, remove and properly dispose offsite of the resultant non-recyclable materials like dirt, debris, excess construction materials, etc., and keep the premises reasonably clean. Upon completion of the work, he shall remove all temporary construction facilities, and unused materials provided for the work, and put the building and premises in a neat and clean condition, and do all cleaning and washing required in the Specifications and restore damaged pavements, grounds and grass, if any, by his construction equipment and vehicles to specifications. Trash and combustible discarded or unused materials shall not be allowed to accumulate in the building or anywhere on the premises. Trash burning on the site will not be allowed.

**9.12 INSPECTION**

- (a) All materials, equipment and workmanship shall be subject to inspection, examination, or testing by the PHA, the A/E and HUD at any and all times during manufacture or construction or installation at any and all places where

such manufacture or construction or installation is carried on. The PHA shall have the right to approve or reject defective material and workmanship and or require its correction within a reasonable period of time. Rejected workmanship shall be satisfactorily corrected. Rejected materials shall be promptly segregated and removed from the premises and satisfactorily replaced with proper material without extra cost therefore. If the Contractor fails to proceed at once and within a reasonable period of time not to exceed 10-15 calendar days with the correction of rejected or defective material or workmanship, the PHA shall have the right to proceed by contract or otherwise have the defects remedied or rejected materials removed from the site and charge the cost of same against any moneys which may be due the Contractor or retained, without prejudice to any other rights or remedies of the PHA. Additional references are made to 20h and 23e of the General Conditions, form HUD-5370, 11/06.

- (b) The Contractor shall furnish promptly all materials reasonably necessary for any tests that may be required. (See Sample, Certificates and Tests, 11 of the General Conditions, form HUD-5370, 11/06). All tests by the PHA shall be performed in such manner as not to necessarily delay the work. Special, full size, and performance tests shall be performed as described in the Technical Specifications.
- (c) If any work is covered up without approval of the PHA, it must, if requested by the PHA be uncovered at the expense of the Contractor. Should it be considered necessary or advisable by the PHA at any time before final acceptance of the entire work to make an examination of the work already completed and installed, by removing or tearing out same, the Contractor shall on request promptly

furnish all necessary facilities, labor, material and equipment to do so. If such work is found to be defective in any material respect or installation work, due to the fault of the Contractor or his sub-contractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If however such work is found to meet the requirements of the Contract the cost of labor and materials necessary involved in the examination and replacement plus 15 % shall be allowed to the Contractor and he shall, in addition, if completion of the work of the entire contract has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

- (d) Inspection of material and finished articles to be incorporated in the work at the site may be made at the place of production, manufacture, or shipment, whenever the quantity justifies it, unless otherwise stated in the Technical Specifications; and such inspection and acceptance, unless otherwise stated in the Technical Specifications, shall be final, except as regards (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of materials and workmanship for final acceptance as a whole or in part shall be made at the site.
- (e) Neither inspection, testing, approval nor acceptance of the work in whole or in part, by the PHA shall relieve the Contractor or his sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract.

- (f) Project inspection works will be performed by a Construction Management firm contracted by the PHA. There will also be a monitor from the PHA who will provide assistance to the CM and act as a liaison with PHA Management.

**9.13 DEDUCTION FOR UNCORRECTED WORK**

If the PHA deems it expedient to require the Contractor to correct work injured or not done in accordance with the Contract, an equitable deduction from the Contract Price shall be made by agreement between the Contractor and the PHA, subject to the approval of HUD and subject to settlement, in case of dispute, as herein provided.

**9.14 QUALIFICATIONS FOR EMPLOYMENT**

- (a) No person under the age of sixteen (16) years and no person undergoing sentence of imprisonment at hard labor shall be employed in the development of the project. No person whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health and safety of others shall be employed in the development of the project; provided, that this shall not operate against the employment of physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform.

**9.15 PERSONS ENTITLED TO BENEFITS OF LABOR AND MATERIAL PROVISIONS**

- (a) The Contractor and each subcontractor shall extend to every person who performs for him the work of an architect, technical engineer, draftsman, technician, laborer, or mechanic on the project, or on any part thereof or in any connection therewith, the benefits of the labor and wage provisions of this Contract regardless of any contractual relationship between the Contractor and

such person, or between any subcontractor and such person.

- (b) The Contractor shall promptly pay all amounts due him for services rendered, work performed, and materials supplied.

**9.16 WEEKLY PAYMENTS**

Every employee of the Contractor or a subcontractor shall be paid in lawful money of the United States, or by check if the Contractor provides or secures convenient and satisfactory facilities approved by the PHA for the cashing of the same without cost or expense to the employee, in the full amount accrued to each individual at the time of closing of the payroll, which shall be at the latest practicable time prior to the date of payment, and there shall be no deductions or rebates on accounts of goods purchased, rent, or other obligations shall be subject to collection only by legal process.

**9.17 PATENTS**

The Contractor shall hold and save the PHA, its officers and agents or representatives harmless from liability of any nature or kind, including costs and expenses, for, or on account of, any patented or unpatented invention, process, article, or appliance manufacture or used in the performance of the Contract, unless otherwise specifically stipulated in the Contract.

**9.18 GENERAL**

- (a) All drawings and specifications are intended to clearly set forth the work, and schedules and specifications of materials are added to assist in establishing the scope and location of the several materials. Collectively they shall govern and control the scope, character, and design of the work and any item called for in any of these documents shall be as though mentioned in all.

- (b) Failure to make reference in the specifications to any item of the work shown in the drawings, but necessary to the completion of the work, shall not relieve the Contractor of the full responsibility for furnishing the material and perform the work in such item in a manner comparable to other items or similar nature for which detailed specifications are included. Any part of an item normally necessary for the completion and successful operation of the work, whether or not definitely stated in the specifications or indicated in the drawings, shall be furnished and installed as part of the contract as well and as faithfully as if so specified or so indicated. On the other hand, the inclusion in the specifications or drawings or any item not applicable to this project shall not place upon the Contractor any obligation to furnish material or perform labor not specifically required for this project.

#### **9.19 STATE EXCISE TAX**

In accordance with the New Payment Law #5 of the Legislature of Puerto Rico, approved October 8, 1987, Contractors doing work or furnishing material for the PHA are obligated to pay the State Excise taxes on all taxable materials, tools, equipment, and machinery. Prospective bidders are urged to consult the said Law and, if necessary, clarify with the Secretary of the Treasury of Puerto Rico, any points in regard to the limitations and application of the Law.

Contractors are cautioned not to place orders consigned to the PHA. They should specify in the order, however, the specific project for which the goods are being ordered. The Contractor must also pay all required taxes, fees, permits and any municipal government construction tax.

**9.20 RETAINAGE TO COVER DEFICIENCIES**

After the project has been completed and accepted by the Owner, the Owner shall retain for a period of one year, from any retained accumulated funds an amount equal to 2.5% of the total contract amount as warranty to cover deficiencies.

The retainage may be released by the Owner at the end of one year period provided that Contractor has complied with the correction of any of the deficiencies found.

The time for correction of deficiencies is agreed to be ten (10) calendar days from notification of same by the Owner. If the deficiency is not corrected in such time, to the satisfaction of the Owner, the Owner may correct same at the contractor's expense and deduct such sum from any retainage funds on hand.

**9.21 BOND IN LIEU OF RETAINAGE**

In lieu of retainage to cover deficiencies to which reference is made in clause 9, Article 9.20 above the Contractor may submit to the Owner an acceptable bond in an amount equivalent to 2 ½ % of the total contract amount.

**9.22 AS-BUILT DRAWINGS**

The Contractor shall prepare and deliver to the PHA the certified As-Built Drawings prior to the last certification for payment. These drawings shall include all changes, adjustments and change orders issued during the construction period. The PHA upon request, will provide the original set of drawings to the Contractor for the execution of this work.

**9.23 TEMPORARY FENCES**

All areas under construction shall have a fence around at all times. To include but not limited to excavations, trenches, etc.

Contractor shall provide and erect, paint and maintain during the life of the contract a temporary fence, complete with entrance gates around his compound area. Fence and gates' materials shall be fabricated with new materials resistant to weather and design shall be as approved by the PHA fences shall be erected along construction stages limits prior to commencing the modernization work in a given stage. Temporary fences shall also be erected along the building where Lead Based Paint and/or Asbestos abatement is being performed. Once the stage is completed and delivered said fence shall be removed by the Contractor to be installed in the next stage and so on until the project is completed. Fences shall be painted with one (1) coat of "Galvopolium", over Rust-Oleum primer, color as selected by the PHA, otherwise indicated. At the termination of the project and contract, the Contractor shall dismantle the temporary fences and remove them from the site at its cost.

#### **9.24 RESIDENT RELOCATION**

The Contractor shall consider as part of the Construction period the following Resident Relocation time for the move-in and move-out effort by the PHA. The time period included in the construction process is as follows: five (5) working days for buildings with up to two units; ten (10) working days for buildings that have between nine and sixteen units; and fifteen (15) working days for buildings in order for remodeling on a building-by-building basis. The Contractor will continue to protect the completed units until occupied.

#### **10. RESIDENT EMPLOYMENT**

The Contractor is required to grant first priority to qualified, unemployed and interested residents of the project in the recruitment and employment of labor for the construction of the work included in this contract. If there were few or no project resident interested or available for

employment, the Contractor shall give preferences to low-income residents from nearby projects or vicinity in accordance with Section 3 of the EEO laws and regulations incorporated herein in Articles 39 and 40 of the General Conditions, form HUD-5370, 11/06.

Not later than twenty (20) calendar days from the date of the order to proceed, the Contractor shall submit to the PHA an Affirmative Action Plan detailing the process by which he intends to comply with the requirements of this section and mentioned articles of the General Conditions. The PHA shall monitor contractor's compliance with said plan and shall take appropriate action, as prescribed in these Specifications and in applicable statutes and regulations, in the event of non-compliance.

**11. UTILITY SERVICES**

Electrical services, water supply and sewer service shall be made operational for Los Alamos Court, Project Construction Areas and temporary Offices. Contractor shall do all necessary work and take all necessary measures with PRASA, PREPA and Puerto Rico Telephone Company to comply with the requirements of this section.

The contractor is responsible for the payment of all the contributions, taxes and/or fees required for this project by the PREPA, PRASA, PRTC, or other Government Agencies. PRPHA will not pay for any government fee.

**12. COMPLETION SCHEDULE**

- (a) The Contractor shall furnish all materials and labor, tools, plant and equipment required to provide a Control Schedule which shall be prepared using the Critical Path Methods (CPM) technique and conforming to the requirements specified.
- (b) The work under this contract shall be completed within the time specified in the contract of calendar days counted from the effective date of the order to proceed.

- (c) The Contractor shall schedule his work in such manner as to substantially complete and deliver for occupancy, including utility services as required in Section 11 above.
- (d) All activities in the Schedule shall be resource and cost loaded.
- (e) No changes in the Completion Schedule shall be made effective without the written approval of the PHA. The Contractor shall include this schedule on the CPM. The Contractor shall also refer to Section 13, Project Living Conditions, and prepare his CPM to comply with said Section too.
- (f) The Project Schedule shall be approved by the PHA or it's Representative in the project.
- (g) The PHA is entitled to electronic versions of all schedules (including updates) submitted by the Contractor and electronic versions of all backup to the submitted schedules. The project schedule shall be update on a monthly basis.
- (h) The Contractor shall submit periodic reports of total float, free float and activity-specific float. Neither party will be entitled to priority in use of float time. In other words, if float is available along the channel of work involved, either party (as long as it is acting in good faith) may, without being charged for a delay to the project, delay or extended work activities up to the point that the float is extinguished. During the course of contract execution, any float generated due to the efficiencies of either party is not for the sole use of the party generating the float; rather it is a shared commodity to be reasonably used by either party.
- (i) The Contractor shall submit a man power curve and cash flow curve on a monthly basis.
- (j) At a minimum, major changes and schedule impacts should be incorporated into the schedule as promptly as possible so that the CPM network accurately reflects current conditions.

- (k) PHA prohibits improper scheduling manipulations such as changing the approved sequential logic.
- (l) In the project schedule there should be an activity indicating the delivery of the submittals by the contractor to the inspector with a reasonable time for evaluation and delivery.
- (m) With each updated schedule submission, provide a computer generated Log Report using recognized schedule comparison software listing all changes made between the previous schedule and name of the current schedule being compared. This report will as a minimum show changes for: Added/Deleted activities, Original Durations, Remaining Durations, Activity Percent Complete, Total Float (or Slack), Free Float, Calendars, Descriptions, Constraints (added, deleted or changed), Actual Starts/Finishes, Added/Deleted Relations, Changed Relation Lags, Changed Driving Relations, and Changed Critical Status.

#### **12.1 CONSTRUCTION CONTROL SCHEDULE**

The bar chart schedule illustrates the schedule of task in calendar days, showing the start and finish dates of all main general activities (Tasks to be accomplished in the proposal).

Each of the items of work to be accomplished shall be illustrated graphically as a bar line, and will be converted into a detailed project control schedule consisting of a network diagram.

A project control schedule shall be prepared with the bar chart using the Critical Path Method of scheduling related to calendar days, which shall be used as a tool to effectively control the progress of all activities and, in case of any delay in the progress of the work,

to take the necessary preventive measures to ensure the completion of the project within the time stipulated in the contract.

The project control schedule shall indicate the order and sequence of the activities which the contractor plans to follow in order to accomplish the work within the period of time stipulated in the contract, including authorized extensions. The project control schedule shall be comprehensive, orderly and realistic and shall cover all the activities, which affect the progress of the work as procurement, planning, design, and construction. Activities of other subcontractor (if applicable), which affect the progress of the work, shall be included in a network diagram with related mathematical tabulation as specified.

## **12.2 NETWORK DIAGRAM**

Network diagrams shall show the order and interdependence of activities and the quantities and sequence in which the work is to be accomplished as planned by the contractor and the PHA and HUD. The basic concept of network scheduling shall be followed to show how the start of a given activities and how the completion of the activity may affect the start of the following activities.

The network diagram shall be depicted using the activity or precedence technique and shall include the following:

1. Activity Description
2. Activity Duration (Work Days)
3. Activity Identification
4. Critical Path Activities Denoted

The time estimated for each activity will be given in whole working days. Activities

which exceed twenty (20) working days in duration will not be included in the network unless specifically approved by HUD and the PHA. Activities which by their nature will have duration in excess of twenty (20) working days shall be represented by a series of staged activities in order to conform to the twenty (20) days limitation.

The contractor shall indicate the number of days per week he plans to be working on the project in compliance with the contract requirements. This number is to be used when the network is scheduled. When the schedule is generated it shall account for all holidays and the time extensions due to inclement weather normally expected. The contractor shall provide in a mathematical tabulation each activity shown on the detailed network diagram for HUD to evaluate. The following information is to be furnished as a minimum for each activity on this tabulation:

1. Activity Description
2. Activity Duration (Work Days)
3. Activity Number
4. Early Start Date (Calendar Date)
5. Early Finish Date (Calendar Date)
6. Late Start Date (Calendar Date)
7. Late Finish Date (Calendar Date)
8. Total Float
9. Critical path Activities Denoted

The mathematical tabulation shall be a computer printout with a column for each of the above requirements.

The mathematical tabulation shall be printed in the form known as "Early Start", that is,

the activities and their related dates shall be listed in order of early start time.

### **12.3 SUBMITTAL PROCEDURE**

The contractor shall submit, within fifteen (15) calendar days after the notice of proceed, the list of activities adjusted to his schedule for the contract to prepare CPM Network for review by the PHA and HUD. (3 copies)

The contractor will revise the later and the contractor shall, within five (5) days, resubmit for final approval three (3) copies of the following:

1. CPM Network Diagram
2. Mathematical Tabulation

The CPM network diagram and mathematical tabulation, when approved by the PHA and HUD, shall constitute the Project Control Schedule.

### **12.4 UPDATING AND REVISIONS**

Each month, as of a calendar date to be established by the PHA and HUD, the contractor shall update the mathematical tabulation and shall provide the PHA and HUD with three (3) copies of the computer printouts. The update tabulations shall reflect the current status of activities as outline on the network diagram.

The CPM Control Engineer to be provided by the contractor shall prepare a monthly report including a complete analysis of the progress of the work and any problem that may be affecting the project. The contractor will submit three (3) copies of the report to the PHA and HUD.

Every eight (8) weeks, the contractor and the PHA shall re-examine the CPM network diagram in order to reflect all the network logic revisions made to the original CPM

network. Three (3) copies of the revised network shall be submitted to the PHA and HUD for their review.

If in the opinion of the PHA and HUD, the required critical path indicates that the contractor has fallen behind schedule or that a revision in sequence of operation may be necessary for any other reason, the contractor shall take all necessary steps to improve his progress, at the expense of the contractor, and shall submit such revised network diagrams, tabulations and operational plans as may be deemed necessary to the PHA and HUD to demonstrate the manner in which an acceptable rate of progress will be required. Three (3) copies the revised network diagrams, tabulations, and operational plan will be provided to the PHA and HUD.

**13. MAINTENANCE OF PROJECT LIVING CONDITIONS**

Tenants of units to be remodeled will be relocated to units elsewhere, on site or off site by the PHA. The units to be remodeled under this contract, in the sequence and order described above will thus be unoccupied. The contract limits define the buildings and site areas to be under construction. The Contractor shall enclose and protect the area within the contract limits with a suitable fence whose details shall be approved by the PHA and his staff.

The Contractor is hereby notified that he must take all necessary steps, precautions, procedures, actions and perform all work required to maintain traffic on any project streets utilized as access to the work site and keep said streets clean and free from debris, and protect from damage all trees, shrubs and decorative features such as benches, luminaries, etc. Work shall be confined to contract limits. Control measures shall be implemented to prevent the migration of dust, smoke, and any other pollutants into areas adjacent to the contract site.

Contractor shall take cognizance that families will continue to be in occupancy and residency at the remainder buildings of the project and that no effort shall be spared to ensure that the normal life and safety of the community be affected in the least possible manner.

**14. CONTRACTOR OWNERSHIP OF SALVAGED ITEMS**

All fixtures, equipment, and materials to be removed by contractor shall become the property of the Contractor. Except as may be otherwise indicated by the Engineer, all doors, frames, bathroom fixtures and accessories, shelving, wall and floor coverings, electrical lamps and fixtures, defective window parts, stoves, sinks, and laundry trays, and any other items indicated in the drawings for removal and/or demolition or that must be removed to permit the work to proceed, shall be removed by the Contractor and disposed off-site. No such materials or equipment removed shall be given to, or allowed to be taken by tenants or anyone outside coming in with trucks and pick-ups for personal use. The Contractor is free to salvage any such removed items and even sell them on the market, whereby it is expected that a credit for such salvaged value will be reflected in the bids received.

**15. LEAD-BASED PAINT REMOVAL PACKING, STORAGE AND DISPOSAL WORK**

The scope of abatement of lead based paint in this project is described in the environmental specifications included in the Construction Documents. Contractor will perform the removal of these toxic materials from the dwelling units as specified in the scope of work, pack and label said materials in accordance with applicable state and federal regulations. Contractor will provide all packing materials and labels for the hazardous and non-hazardous waste resulting from the abatement work. The Contractor will provide storage containers for waste materials to be properly packed and labeled. The Contractor will transfer all properly packed and labeled material to properly prepared containers and assume responsibility for their safekeeping.

The storage, hauling, and final disposal processes of the Lead-Based Paint Contaminated Material will be performed by the Contractor, through a D.O.T. and "C.S.P." authorized hauler.

The Abatement Contractor shall be responsible for re-plastering any work that he damages during the abatement process at no cost to the Owner.

All interior and exterior Lead-Based Paint component encapsulation works and procedures shall be discarded. Consider only removal works and procedures that comply with all Federal and Commonwealth requirements and regulations.

All documents and payments needed to obtain permits from the Environmental Quality Board removal and disposal are to be handled and paid by the Contractor.

**16. ASBESTOS, REMOVAL, PACKING AND STORAGE WORK**

The scope of abatement of asbestos containing materials in this project is described in the environmental specifications included in the Construction Documents. Contractor will perform the removal of these toxic materials from the dwelling units as specified in the scope of work, pack and label said materials in accordance with applicable state and federal regulations. Contractor will provide all packing materials and labels for the toxic and non-toxic waste resulting from the abatement work. The Contractor will provide storage containers for waste materials properly packed and labeled. The Contractor will transfer all properly packed and labeled material to properly prepared containers and assumes responsibility for their safekeeping.

The storage, hauling and final disposal processes of the Asbestos Contaminated Material will be performed by the Contractor, through a D.O.T. and "C.S.P." authorized hauler".

The Abatement Contractor shall be responsible for re-plastering any work that he damages during the abatement process at no cost to the Owner.

All documents and payments needed to obtain permits from the Environmental Quality Board for removal and disposal are to be handled and paid by the Contractor.

**17. OTHER ENVIRONMENTAL PERMITS**

The Contractor shall provide all documents and payments needed to file and procure permits required by the Environmental Quality Board such as CES, PFE, DS3 and Consolidated General Permit. The Contractor shall bear all costs associated with the acquisition and execution of these permits. In the event that a Plan CES' design is not provided by the Owner, the Contractor will be responsible in procuring the Plan CES' design, its implementation and maintenance. For this instance, the Contractor also shall provide all documents and payments needed to file and procure the Plan CES and will assume all costs associated to the Plan CES' design, implementation and maintenance without any right to be reimbursed by the Owner.

**18. ROOFING SYSTEM GUARANTEE**

The Contractor shall provide the PHA with the material and repair guarantee bond as stated on the Contract Forms.

**19. PRE-ESTABLISHED UNIT PRICE**

In the event that areas that have been planted by the Contractor in accordance with the plans and specifications, and in a workmanlike manner accepted as satisfactory by the Engineer, are damaged due to vandalism and/or improper use of the areas by persons not belonging to the contractor's organization, the Engineer shall determine whether or not such areas should be replanted. If the contractor has taken all precautionary measures required by the plans and specifications, the contractor shall be paid an additional compensation in accordance with a schedule of pre-established unit prices. Payment in accordance with the schedule will constitute compensation in full for any replanting work ordered. Contractor shall submit a schedule including the botanical name, common name, size and unit price. Schedule shall be submitted within 30 days after notice to proceed.

**20. DEFINITION**

Wherever used in any of the contract documents, the following meanings shall be given to the terms herein defined.

- a. The "Contract" means the contract executed by the Administration and the contract of which these General conditions form a part. The documents which comprise the contract are set forth in the contract form.
- b. The term "PHA" means Public Housing Administration..
- c. The term "HUD" means the United States of America (acting through the Department of Housing and Urban Development) which (subject to the provisions of a certain contract for financial aid with the Local Authority) has agreed to aid in financing the work to be performed under the contract. However, nothing containing in the contract, shall be construed to create any contractual relationship between the contractor and HUD.
- d. The "Architect/Engineer or Designer" is the person, firm, or corporation under contract with the PHA for architectural, engineering, and/or construction management services related to the work.
- e. The "Executive Director" is the direct representative of the Authority acting as its Executive Officer.
- f. "Inspector" will be the person or persons assigned to supervise all work in accordance with the "Project" in behalf of the PHA or its Architects/Engineers are representing the Executive Director in all the cases specifically set forth in these documents.
- g. The "HUD Project Engineer" is the representative of "HUD". The PHA Zone Engineer and "Project Engineer" are the representative of PHA.
- h. The term "Project" means the housing project, the construction work for which is contemplated in whole or in part under this contract.

- i. The term "Specifications" means the volume which includes, and the term shall include, the instructions and forms (consisting of the Form of Invitation for Bids, Instructions to Bidders, Form of Bid, Bid Bonds, Form of Non-Collusive Affidavit, and Form of Performance and payment Bond or Bonds), the General Specifications (consisting of the General Conditions, Supplementary General Conditions, Special Conditions, and the Schedule of Drawing) and the Technical Specifications
- j. The term "Contracting Officer" means the person within the PHA's organization duly authorized by the governing body thereof from time to time to administer construction contracts for and in the name of the PHA. It does not necessarily mean the person executing this contract. The PHA shall advise the contractor the name of the person or official who is designated as contracting officer and of any changes of such designation.

Contractor:

1. Only one contractor is recognized as a party to this contract, and where the term "Contractor" is used the prime contractor who signed this contract is referred to. For convenience, the Technical Specifications have been divided into separate headings or divisions to cover the various trades represented in the work, and where terms such as "Mason Contractor", "Carpenter contractor", and other "Contractors" are referred to it has been for convenience only.
2. The contractor may authorize his superintendent or other individual to sign, for him and his name:
  1. The Schedule of Amounts for Contract Payments.
  2. Progress Schedules.
  3. Periodical Estimates for Partial Payments and Related papers.
  4. Change Orders.

Prior to the execution of the first of any such documents the Contractor shall have filed with the PHA a notarized statement evidencing such authorization and authenticating the signature to be so honored.

**21. BUY AMERICAN ACT**

- a. In accordance with the provisions of Section 6 (c) of the United States Housing Act of 1937, as amended, (42 U.S.C. 1406 (c)), the Buy American Act (41 U.S.C. 10a-110d, and Executive Order 10582, December 13, 1954, (3 CPR Supp.)), the contractor agrees that only domestic construction material will be used (by the contractor, subcontractors, material men, and suppliers) in the performance of this contract, except for the non-domestic materials listed in the Special Conditions.
- b. "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work, in unmanufactured construction material in a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material in "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Components" means any article, material, or supply directly incorporated in a construction material.
  1. A component shall be considered to have been "mined", produced, or manufactured in the United States" (regardless of its source in fact) if the article material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by HUD to be not mined, produced, or manufactured in the United States is sufficient and reasonably available commercial quantities and of a satisfactory quality.

**22. IMPORTANT NOTICES**

- a. The specific model numbers and codes from a given manufacturer and/or vendor of any product listed in the drawings and/or specifications are for descriptive purposes only. Any other product model, of any other manufacturer and/or vendor, with similar materials, size, color shape and functional characteristics as the ones shown can be used after approval by the owner.
- b. The contractor and/or subcontractor is prohibited from placing a lien on the PHA property.
- c. Any contractor awarded a contract shall comply with 24 CFR part 35 prohibiting the use of Lead Base Paint.
- d. The contractor shall comply with the following regulations of the Environmental Quality Board:
  - 1. Application for approval for the Construction or Operation of Emission Sources for fugitive dust
  - 2. Application for Solid Waste Activity (Form DS-3)
  - 3. Plan for Erosion and Sediment Control (Cest Plan)
  - 4. If necessary, application for National Pollutant Discharge Elimination System (NPDES) permit from the Environmental Protection Agency (EPA).

**23. EXECUTIVE ORDER 11246**

S 130.15 Equal Opportunity clause.

1. Government contracts. Except as otherwise provided, the following equal opportunity clause contained in section 202 of the order shall be included in each Government contract entered into by the Department (and modification thereof if not included in the original contract); During the performance of this contract, the contractor agrees as follows:

- 1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or

understanding, a notice to be provided by the Department's contracting officer, advising the labor union or worker's representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employments.

- 4) 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 Secretary of Labor.
- 5) 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 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of 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 in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulation, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246

or September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interests of the United States.'

- 8) The applicant 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 applicant so participating is a State or 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.

The applicant agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision or such compliance; and that it will otherwise assist the Department in the discharge of its primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract of contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrates eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry

out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Department of the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertaking, the Department may take any of all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, assistance occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity in each of its nonexempt subcontracts.

Incorporation by reference. The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than \$50,000 and such other contracts as the Director may designate.

Incorporation by operation of the order and departmental regulations. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order, the "rules and regulation" and these regulations to include such a clause whether or not it is physically incorporated in such contracts. The clause is applicable to every nonexempt contract where there is no written contract between the Department and the contractor.

Adaptation of language. Such necessary changes in language may be made in the equal opportunity clauses as shall be appropriate to identify properly the parties and their undertakings.

**24. CONTRACT DOCUMENTS**

Should any inconsistency appears between the General Conditions for Construction Contracts, HUD Form 5370, the Supplementary Conditions and this Special Conditions, the latter shall prevail.

## **ATTACHED COPIES**

