

NJEDA CDBG-DR ADMINISTRATIVE MANUAL

Community Development Block Grant Disaster Recovery Program

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CHAPTER I

INTRODUCTION

1. Purpose

This Manual is provided to assist New Jersey Disaster Recovery Community Development Block Grant (CDBG-DR) grantees (the NJEDA) and its Subrecipients in implementing disaster recovery grants. It provides guidance to Subrecipients regarding the general requirements for activities using CDBG-DR funds. It is the responsibility of both the NJEDA and its Subrecipients to ensure that all provisions of this manual, federal rules and regulations, and grant award are complied with. Both parties must also carry out proper and efficient grant administrative practices. Should questions arise, Subrecipients should immediately contact the New Jersey Economic Development Authority Office of Recovery.

2. Definition of Terms

CDBG:

A grant guided by Title I of the Housing and Community Development Act of 1974, as amended and those regulations set forth in 24 CFR Part 570, Subpart I, as may be amended from time to time and all other applicable Federal and State regulations and laws and assurances signed by Recipient at the time the Recipient's Application was submitted.

Eligible Costs:

Costs for the activities specified in the Subrecipient Agreement for which grant funds are budgeted, provided that such costs (i) are incurred in connection with any activity which is eligible under Disaster Relief Appropriations Act of 2013 (PL 113-2) and Title I of the Housing and Community Development Act of 1974, and (ii) conform to the requirements of Attachment B of Office of Management and Budget Circular A-87 (Cost Principles Applicable to Grants and Contracts with State and Local Government), as may be amended from time to time. For purposes of this Agreement, Eligible Costs shall also comply with the eligible costs set forth in the NCR Guidelines for the Streetscape Revitalization Program.

HUD:

The U.S. Department of Housing and Urban Development

3. Conflict of Interest

The following governing regulations shall apply to conflicts of interest: 24 CFR §570.611, 24 CFR §85.36 and 24 CFR §84.42 of the Federal Regulations (conflict of interest) for the Community Development Block Grant Program as well as State of New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-1 et seq., as applicable. Those stated regulations affect Subrecipients and the Subrecipient's designees, agents, members, officers, employees, consultants or members of its governing body, or anyone who is in a position to participate in a decision-making process or gain inside information with regard to the Project, or has or shall have any interest, whether direct or indirect, or in any contract or subcontract or the proceeds thereof for work performed in connection with the Project, or benefit there from. Subrecipients will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts that abide by those referenced Regulations and Laws. No employee, officer or agent of the Subrecipient shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, whether real or apparent, would be involved. Such a conflict would arise when:

- A. The employee, officer or agent, or
- B. Any member of his immediate family, or
- C. His or her partner, or
- D. An organization which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award.

The Subrecipient's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Subrecipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Subrecipient's officers, employees, or agents, or by contractors or their agents. The NJEDA may impose or enforce additional prohibitions relative to real, apparent, or potential conflicts of interest.

4. Hatch Act

The Subrecipient shall not use any CDBG-DR funds to finance the use of facilities or equipment for political purposes, or engage in other partisan activities (e.g. candidate forums, voter transportation, or voter registration). Subrecipients will comply with the provisions of the Hatch Act that limit the political activity of employees and the HUD regulations governing political activity at 24 CFR §570.207.

5. Authorized Employees

The State of NJ Senate Bill, No. 1842 prohibits any business entity or employer from knowingly employing, hiring, or continuing to employ an unauthorized alien to perform work in the state of

New Jersey. Subrecipients and their Contractors shall therefore covenant that it is not knowingly in violation of Senate Bill, No. 1842, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully to work in the United States.

6. Small, Women, Minority, and Veteran Owned Business Enterprises

It is federal and state government public policy to encourage contracting with business enterprises whose ownership is qualified or certified as one of the following or any combination thereof:

1. small business enterprises (SBEs)
2. minority business enterprises (MBEs)
3. women business enterprises (WBEs)
4. veteran owned business enterprises (VBOs)

Pursuant to N.J.A.C. 17:13, N.J.A.C. 17:14, and 40 CFR Part 31.136(e), Subrecipients will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus firms are utilized when possible.

Pursuant to N.J.A.C. 17:13 and N.J.A.C. 17:14 et al, Subrecipients are required to make a good-faith effort to award to eligible Small Business Enterprises ("SBEs") twenty-five (25%) percent of the total dollar value of all discretionary* purchases for goods and services. The U.S. Small Business Act (15 U.S.C. 632) and N.J.A.C. 17:14-4.1 et al, Subrecipients will take all necessary affirmative steps to assure the small business enterprises are utilized

*Discretionary expenditures are defined as those purchases in which the Subrecipient has the ability to select the Vendor; in contrast to non-discretionary expenditures in which the Subrecipient has no other option than to purchase from one source (for example, electrical utilities must be purchased from New Jersey Public Service Electric and Gas).

The Subrecipient and all other participating parties (including contractors and subcontractors) will take all necessary affirmative steps and best efforts to afford small, minority and women owned business enterprises, and labor surplus area firms the maximum practicable opportunity to participate in federally-assisted contracts.

7. Record Keeping

The general CDBG standard for record keeping is that records must be *accurate, complete and orderly*. The Subrecipient shall maintain all records required by 24 CFR 570.506, as applicable. Therefore, a Subrecipient shall maintain records that will include the following:

- A. **Administrative records:** These are files and records that apply to the overall administration of the subrecipient's CDBG activities. They include the following:
 - Personnel files.
 - Property management files.

- General program files: files relating to the subrecipient's application to the grantee, the Subrecipient Agreement, program policies and guidelines, correspondence with grantee and reports, etc.

- Legal files: articles of incorporation, bylaws of the organization, tax status, board minutes, contracts and other agreements.

B. **Financial records:** These include the chart of accounts, a manual on accounting procedures, accounting journals and ledgers, source documentation (purchase orders, invoices, canceled checks, etc.), procurement files, bank account records, financial reports, audit files, etc.

C. **Project/case files:** These files document the activities undertaken with respect to specific individual beneficiaries, property owners, and/or properties.

D. **Certified Payroll Records:**

SEE COMPLIANCE – CHAPTER IV – LABOR STANDARDS

8. Record Retention Requirements

Subrecipient shall maintain all Project records required by 24 CFR 570.506 for **five (5) years**.

If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

CHAPTER II

PROCUREMENT STANDARDS, PROCEDURES, AND FORMS

Subrecipients must maintain records that document the rationale for the method used for procurement, selection of the contract type, contractor selection or rejection, and the basis for the selection including cost or price. Refer to the previous chapter for Rules of Conduct that must be followed throughout the project, including during procurement.

1. Definition of Terms

Bid or sealed bid:	An offer in response to invitations for bids
Contract:	A mutually binding legal relationship obligating the seller (contractor; professional A/E) to furnish the supplies or services (including construction) and the buyer (Subrecipient) to pay for them. It includes all types of commitments that obligate the Subrecipient to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing.
Contractor:	A third-party firm procured by Subrecipient and paid with CDBG-DR funds in return for a specific service (e.g. construction or professional services)
Contracting Unit:	Subrecipient (Owner)
Cost analysis:	The review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.
Offer:	A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids"; responses to requests for proposals (negotiation) are offers called "proposals".
Offeror:	Bidder (Contractor/Consultant)
Owner:	Subrecipient (Municipality or City) or private entity that receives CDBG-DR funds.

Project:	The project activities described in the executed Subrecipient Agreement, which are to be carried out to meet the objectives of the CDBG-DR Program.
Professional Services:	The professional landscape, architectural, engineering, and land surveying services, including planning, environmental, and construction inspection services required for the development and construction of projects, as defined by the laws of this State or those performed by an architect, landscape architect, professional engineer or professional land surveyor in connection with his or her professional employment practice.
Requests for proposals (RFPs):	A document that outlines the bidding process and contract terms, and provides guidance on how the bid should be formatted and presented. A RFP is typically open to a wide range of bidders, creating open competition between vendors.
Request for qualifications (RFQs):	Solicitations to procure the services of an engineering or architectural firm, focusing primarily on applicants' track records.
Sealed bidding:	A method of contracting that employs competitive bids, public opening of bids, and awards.
Section 3:	Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (as amended), requires that economic opportunities generated by certain HUD financial assistance for housing (including Public and Indian Housing) and community development programs shall, to the greatest extent feasible, be given to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.
Sole source acquisition:	A contract for the purchase of supplies or services when only one source for the goods or services is available.
Solicitation:	Any request to submit offers or quotations to the Subrecipient. Solicitations under sealed bid procedures are called "invitations for bids". Solicitations under negotiated procedures are called "requests for proposals."

Subcontract:	Any contract as defined above “Contract” entered into by a subcontractor to furnish supplies or services for performance of a prime contract, or a subcontract.
Subcontractor:	Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.
Subrecipient (Owner):	The unit of local government selected to administer this Project on behalf of the New Jersey Economic Development Authority.

2. Affirmative Action’s required by Subrecipients–MBE/WBE/VB/SB Utilization

Subrecipients and their bidders must fully comply with the requirements, terms and conditions of the Federal and State policy to award a fair share of sub agreements to minority and women’s businesses. The bidder commits itself to taking affirmative actions contained herein, prior to submission of bids or proposals.

The Subrecipient and its bidders will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps shall include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- F. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in items (B) (a) through (e) of this section.

3. Procurement Methods

NOTE: Section 3 compliance does not apply to the NJ Small Business Loan Program. (REVISED 6/10/15)

In accordance with the New Jersey CDBG Disaster Recovery Program Action Plan (approved by

HUD 4/29/2013), the NJEDA has opted to follow the NJ State Laws pertaining to procurement. The Subrecipient shall comply with New Jersey State regulations and requirements regarding procurement, including but not limited to Executive Order 125 (Christie 2013). If the municipality has their own written procurement procedures, the stricter of the two methods (local or State) shall prevail.

There are four methods of procurement permitted for NJEDA CDBG-DR projects: small purchases, procurement by competitive proposals, procurement by noncompetitive proposals, and competitive sealed bids. Each of these methods is outlined below, including procedural steps and requirements.

A. Small Purchase:

Relatively simple, informal procurement procedures will be used where the purchase of materials, single task services, supplies, equipment, and/or other property will not cost in the aggregate more than \$36,000, except where further limited by state law. The Subrecipient must obtain a minimum of three written price or rate quotations from qualified sources. Documentation on all quotations received shall be made a part of the file. Selections shall be made principally on price. Payment shall be made upon delivery or completion.

B. Procurement by Competitive Proposal:

This is a qualifications-based procurement method used for architectural/engineering professional services. A fixed price or cost reimbursement contract shall be used upon award. Subrecipients must follow the procurement statute set forth in N.J.S.A. 52:34-9.1 et seq.; and the applicable regulation as N.J.A.C. 17:19-1.1, 3.1 et seq. Compliance with the State of NJ Standard Terms and Conditions specified in Appendix 1, Exhibit 1-1, is required for all bidders, as applicable.

CDBG-DR funds may not be used for payment of services performed in preparation of an application or other preliminary work completed prior to funding. Also, no bonuses may be awarded with CDBG-DR funds to a firm or individual if a grant is awarded. Some firms may require that services performed in preparation of an application be compensated, and, if so, they must be financed from sources other than CDBG-DR.

Subrecipients must employ one of the following two options to procure professional services necessary to carry out the CDBG-DR award.

1. Option 1

If the Subrecipient local government currently has an architectural/engineering professional (licensed engineer or architect) under contract, this professional may be used to carry out the scope of the CDBG-DG work provided that **all** of the following specific conditions have been met and provided to Department of Community Affairs, for review and acceptance in advance of work being performed:

- a. The contract for professional services must have been executed within the past 24 months;
- b. The procurement demonstrates that the professional is licensed by the appropriate boards;

- c. The scope of services for the original procurement must include services that are specifically named or encompassing of those proposed to be paid for with CDBG-DR funds;
- d. Price was an evaluative factor in the procurement method;
- e. The municipality must submit the following documentation for DCA review:
 - 1. Original procurement notice (Request for Proposals or Request for Qualifications) with date and method of publication shown;
 - 2. A copy of the Request for Proposals or Qualifications with identification of procurement approach (fixed firm price, time and material, percentage of total contract);
 - 3. Award or selection documentation;
 - 4. A copy of the current contract; and
 - 5. A statement from the purchasing official stating their determination of how this current contract meets State Procurement Law.

A final determination of compliance with HUD and state procurement requirements rests solely with the staff of the Department of Community Affairs.

2. **Option 2**

If the Subrecipient local government does not have an engineering/architectural professional already under contract as described in Option 1, procurement of said professional will be by competitive proposal as set forth in N.J.S.A. 52:34-9.1 et seq.; and the applicable regulation as N.J.A.C. 17:19-1.1, 3.1 et seq. The following requirements apply:

Procurement by competitive proposals:

- a. Requests for proposals will be publicized (no less than 10 days prior to the bid receipt date) and shall identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- b. Proposals will be solicited from an adequate (typically three) number of qualified sources;
- c. Request for proposals or qualification statements shall contain a detailed list of tasks in the proposed scope of work that is expected to be accomplished;
- d. Subrecipients will have a method for conducting technical evaluations of the proposals received and for selecting awardees which will be identified in the request for proposals or qualification statements, including the corresponding point system that will be used to rate the proposals/qualification statements. Requests for proposals shall always include cost and at least one non-cost evaluation factor ; and
- e. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price, expertise of the professional and other factors considered. Unsuccessful offerors shall be notified in writing within ten working days of contract award. Documentation of notification shall be maintained in the contract selection file for the individual project.
- f. The municipality must submit the following documentation to EDA for the project file:

1. Procurement notice (Request for Proposals or Request for Qualifications) with date and method of publication shown;
2. A copy of the Request for Proposals or Qualifications with identification of procurement approach (fixed firm price, time and material, percentage of total contract);
3. Award or selection documentation;
4. Copies of all bids received and bid tabulation sheet;
5. Resolution(s) to enter into contract and/or any resolutions pertaining to the procurement process;
6. A copy of the current contract; and
7. A statement from the purchasing official stating their determination of how the contract meets State Procurement Law.

Professional Services Firm Clearance (Debarment): Consulting and/or A/E firms must also be cleared pursuant to item 14 of this same chapter. The Subrecipient shall submit the Verification of Professional Services Eligibility form (Appendix 2, Exhibit 2-1) to NJEDA for clearance. This clearance is above and beyond all pre-qualification verifications performed by the Division of Property Management and Construction (DPM&C) as per N.J.A.C. 17:19-1.1, 3.3.

Maximum Fees: As per the Streetscape Revitalization Grant Program FAQ posted on the NJEDA website (http://www.njeda.com/web/pdf/Streetscape_FAQ.pdf), soft costs, such as architectural and engineering services, feasibility studies, site preparation, construction management services, and other soft costs such as accounting, legal and financial costs performed in support of the project cannot exceed twenty percent (20%) of the total approved project budget. The limits imposed for soft costs do not preclude a Subrecipient from using local funds to pay a higher amount, if it so desires.

C. Procurement by Noncompetitive Proposals:

Noncompetitive proposals shall be used when small purchase, formal advertising, or competitive proposal procedures are not feasible. Noncompetitive proposals will involve solicitations of a proposal from only one source. This can also occur if solicitations under the competitive proposal procedures result in only one proposal or qualification statement. Noncompetitive proposals shall only be used when written authorization has been obtained from the NJEDA. In order to qualify for this type of procurement, one of the following circumstances must apply:

1. The item or service is available only from a single source;
2. It is determined that a public urgency or emergency exists and the urgency will not permit the delay beyond the time needed to employ one of the other three methods of procurement.
3. After solicitation of a number of sources, competition is determined to be inadequate.

D. Competitive Sealed Bids:

All construction procurements (or for goods costing more than \$36,000) shall follow the competitive sealed bid procurement method. Under this procedure bids are publicly advertised in accordance with the State's Local Public Contract Law (N.J.S.A. 40A11-1 et seq.) A firm fixed price contract shall be awarded to the responsible bidder whose bid is

lowest in price and that conforms to all the material terms and conditions of the advertisement for bids.

Competitive sealed bids can be used ONLY when the following criteria are met: (1) there are complete, adequate, and realistic specifications or purchase descriptions; (2) there are three or more responsible bidders who are willing and able to compete effectively; (3) the procurement can be made on a firm fixed-price contract and selection of the successful bidder can appropriately be made principally on the basis of price.

Procedural Steps and Requirements for Competitive Sealed Bids:

1. Receipt of **Notice of Award** has been issued by NJEDA and received by Subrecipient for the activity or project related to the proposed construction contract.
2. Subrecipient shall obtain/perform a detailed construction **cost estimate** prior to bid submissions which shall be used for comparative verification of all submitted bids. Federal and State prevailing wage rates (the higher of the two) based on the county in which the project is located should be utilized in any analysis of construction labor costs.
3. **Create the Bid Package**
 - a. Write the technical bid specifications:
 1. Usually written by the Subrecipient's architect or engineer on the basis of prepared plans or working drawings.
 2. Provide a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project.
 3. Must be sealed by an architect or engineer registered in New Jersey.
 4. The base bid should include all components of the approved project. The base bid should not include any items which were not in the approved application or which have not received subsequent approval from the NJEDA.
 - b. Obtain all lands, rights-of-way and easements necessary for carrying out the project.
 - c. If the Subrecipient's construction project involves real property acquisition or work on private property, the Subrecipient should make sure the actions undertaken according to the provisions of the Uniform Relocation Act (URA).
 - d. Contact the regional notification center and the owners of underground utilities or facilities that are not members of the regional notification center for the existence and location of all underground utilities and facilities within the construction area.
 - e. Include all items listed from the Contract Requirements Section of this document in all specifications for bidding and contracting.

4. **Advertisement of Bids**

- a. The advertisement for all bids shall be published in an official newspaper of the Subrecipient sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but in no event less than 20 days prior to such date. Copies of all publicized bid advertisements, including the publication date(s), must be submitted to the NJEDA once published. Advertisements must be placed in local minority newspapers or Subrecipients must directly solicit small, minority, women-owned, veteran-owned and section 3 firms. For all contracts, the date fixed for receiving bids shall not fall on a Monday, or any day directly following a State or Federal holiday.
- b. Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until 24 hours before the bid opening date.
- c. The advertisement must call the bidders attention to the conditions of employment and requirements of federal and state prevailing wage rates, Segregated Facility, Section 3 of the HUD Act of 1968, Section 109 and Equal Employment Opportunity.
- d. A pre-bid conference should be held with time and location clearly identified in the “*Information for Bidders*”.
- e. If the Subrecipient and/or NJEDA amends the bid documents during the advertisement period, addenda must be sent to all prospective bidders who have received bid documents.
- f. No public entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays; however, if the necessity arises to issue an addendum modifying plans and specifications within the 72-hour period prior to the advertised time for the opening of bids, then the opening of bids shall be extended for at least 7 days, but not to exceed 21 days, without the requirement of re-advertising the project. The addendum shall state the revised time and date for the opening of bids. A copy of each addendum shall be submitted to the NJEDA at the time the addendum is issued, including addenda solely pertaining to federal wage rate decisions.
- g. Subrecipients must maintain a log of bidders who were sent or obtained bid documents.

5. **Interpretation and Addenda**

- a. The bidder understands and agrees that its bid is submitted on the basis of the specifications prepared by the owner. The bidder accepts the obligation to become familiar with these specifications.

- b. Bidders are expected to examine the specifications and related bid documents with care and observe all their requirements. Ambiguities, errors or omissions noted by bidders should be promptly reported in writing to the appropriate official. Any prospective bidder who wishes to challenge a bid specification shall file such challenges in writing with the contracting agent no less than three business days prior to the opening of the bids. Challenges filed after that time shall be considered void and having no impact on the contracting unit or the award of a contract pursuant to N.J.S.A. 40A:11-13. In the event the bidder fails to notify the owner of such ambiguities, errors or omissions, the bidder shall be bound by the requirements of the specifications and the bidder's submitted bid.
- c. No oral interpretation and or clarification of the meaning of the specifications for any goods and services will be made to any bidder. Such request shall be in writing, addressed to the owner's representative stipulated in the specification. In order to be given consideration, a written request must be received at least seven (7) business days prior to the date fixed for the opening of the bid for goods and services.

All interpretations, clarifications and any supplemental instructions will be in the form of written addenda to the specifications, and will be distributed to all prospective bidders. All addenda so issued shall become part of the specification and bid documents, and shall be acknowledged by the bidder in the bid. The owner's interpretations or corrections thereof shall be final. This action must not take place later than 72 hours prior to the bid submission deadline. If this time period is not possible, the addendum may be distributed and the deadline may be delayed exactly one week. All bidders obtaining bid documents must be made aware of all addenda in order not to interrupt the procurement procedure.

When issuing addenda, the owner shall provide required notice prior to the official receipt of bids to any person who has submitted a bid or who has received a bid package pursuant to N.J.S.A. 40A:11-23c.1.

- d. Discrepancies in Bids
 - 1. If the amount shown in words and its equivalent in figures do not agree, the written words shall be binding. Ditto marks are not considered writing or printing and shall not be used.
 - 2. In the event that there is a discrepancy between the unit prices and the extended totals, the unit prices shall prevail. In the event there is an error of the summation of the extended totals, the computation by the owner of the extended totals shall govern.
- e. Attendance at a Pre-Bid Conference may be stated in the Notice to Bidders.

6. Brand Names, Standards of Quality and Performance

- a. Brand names and/or descriptions used in these specifications are to acquaint bidders with the types of goods and services desired and will be used as a standard by which goods and services offered as equivalent will be evaluated.
- b. Variations between the goods and services described and the goods and services offered are to be fully identified and described by the bidder on a separate sheet and submitted with the bid proposal form. Vendor literature WILL NOT suffice in explaining exceptions to these specifications. In the absence of any exceptions by the bidder, it will be presumed and required that the goods and services as described in the bid specification be provided or performed.
- c. It is the responsibility of the bidder to document and/or demonstrate the equivalency of the goods and services offered. The owner reserves the right to evaluate the equivalency of the goods and services.
- d. In submitting its bid, the bidder certifies that the goods and services to be furnished will not infringe upon any valid patent or trademark and that the successful bidder shall, at its own expense, defend any and all actions or suits charging such infringement, and will save the owner harmless from any damages resulting from such infringement.
- e. The contractor shall guarantee any or all goods and services supplied under these specifications. Defective or inferior goods shall be replaced at the expense of the contractor. The contractor will be responsible for return freight or restocking charges.

7. Alternative Deductibles/Alternate Add-Ons in Construction Bidding

In an effort to remain flexible in the bidding process for construction activities, the Subrecipient may set in place alternative deductibles or alternate add-ons. These items must be clearly marked as such and, in the event of bids received over budget, may be “deducted” from the scope of the project, or in the event of bids received under budget, may be “added” to the scope of the project. All alternative deductibles/additions must be assigned a number in order of preference to be eliminated/added. Any elimination/additions of these items must follow that numerical guide (e.g., Item #2 may not be deducted/added prior to Item #1). No items may be eliminated/added from a bid process if they were not initially indicated as an alternative deductible or alternate add-on. Alternate deductibles should include, but not be limited to, items the Subrecipient may be able to complete on its own or items that would not have an adverse affect on the project if omitted.

8. Pricing Information for Preparation of Bids

- a. The owner is exempt from any local, state or federal sales, use or excise tax.
- b. Contractor shall be responsible for obtaining any applicable permits or licenses from any government entity that has jurisdiction to require the same. All bids submitted shall have included this cost.

- c. Bidders shall insert prices for furnishing goods and services required by these specifications. Prices shall be net, including any charges for packing, crating, containers, etc. All transportation charges shall be fully prepaid by the contractor, F.O.B. destination and placement at locations specified by the owner. As specified, placement may require inside deliveries. No additional charges will be allowed for any transportation costs resulting from partial shipments made for the contractor's convenience.

9. **Statutory and other Requirements**

**SEE COMPLIANCE: CHAPTER IV - LABOR STANDARDS
CHAPTER V - SECTION 3
CHAPTER VI - EQUAL EMPLOYMENT
OPPORTUNITY**

10. **Determination of Bidders Compliance with SBE/MBE/WBE/VBO Utilization**

It is to be noted that the bidders must demonstrate compliance with SBE/MBE/WBE/VBO requirements to be deemed responsible.

To demonstrate compliance all bidders **must complete and submit** with Bid:

- a. **NJEDA SWMVBE Form 1-** General Contractor's Schedule of Small, Women's, Minority and Veteran owned Business Enterprise Utilization Worksheet (see Appendix 3)
The following information must be completed on the form:
 - 1. Name of MBE/WBE/SBE/VBO firms, their address and contact persons
 - 2. Description of work to be performed by the SWMVBE firm;
 - 3. Aggregate dollar amount of work to be performed by MBE/WBE/SBE/VBO firms;

Good Faith efforts, including documentation of contacts made with SBE/MBE/WBE/VBO firms; including but not limited to:

- a. Description or contacts to SBE/MBE/WBE and VBO organizations, agencies and associates which serve SBE/MBE/WBE and VBOs, including names of organizations, agencies, association, and date of contact;
- b. Description of contacts to SBE/MBE/WBE and VBO firms, including number of contacts, fields, (i.e. equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and date of contacts.

11. **Bonding Requirements**

In carrying out CDBG-DR activities (except professional services contracts), **CDBG-DR Subrecipients must establish bonding and insurance requirements that ensure completion of CDBG-DR funded construction contracts in the event of contractor or subcontractor default.** Subrecipients are free to use their requirements relating to bid guarantees, performance bonds, and payment bonds for contracts of

\$100,000 or less in value. For contracts above the \$100,000, the minimum requirements shall be as follows:

a. **Bid Guarantee**

A bid guarantee is used to ensure that a bidder, if awarded a contract within the time stipulated, will enter into a contract and furnish the performance bond, payment bond and, the maintenance bond (if required).

Bidders shall submit with the bid a certified check, cashier's check or bid bond in the amount of ten percent (10%) of the total price bid, but not in excess of \$20,000, payable unconditionally to the owner. When submitting a Bid Bond, it shall contain Power of Attorney for full amount of Bid Bond from a surety company authorized to do business in the State of New Jersey and acceptable to the owner. The check or bond of the unsuccessful bidder(s) shall be returned pursuant to N.J.S.A. 40A:11-24a. The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted. The check or bond of the successful bidder shall be forfeited if the bidder fails to enter into a contract pursuant to N.J.S.A. 40A:11-21.

Failure to submit a bid guarantee shall result in rejection of the bid.

b. **Consent of Surety**

A consent of surety is an agreed upon written legal relationship between a surety and a contractor. If the contractor is awarded the contract, the surety will provide to the contractor a bond for the faithful performance of all provisions of the specifications and/or all matters relating to the performance of the contract. If the bidder submits a certified check or a cashier's check, a Consent of Surety for a performance bond can still be required.

Bidder shall submit with the bid a Certificate (Consent of Surety) with Power of Attorney for full amount of bid price from a Surety Company authorized to do business in the State of New Jersey and acceptable to the owner stating that it will provide said bidder with a Performance Bond in the full amount of the bid. This certificate shall be obtained in order to confirm that the bidder to whom the contract is awarded will furnish Performance and Payment Bonds from an acceptable surety company on behalf of said bidder, any or all subcontractors or by each respective subcontractor or by any combination thereof which results in performance security equal to the total amount of the contract, pursuant to N.J.S.A. 40A:11-22.

Failure to submit a Consent of Surety form shall result in rejection of the bid.

Once an award of contract is made, additional Bonding requirements will be imposed, including Contractor Performance, and Payment Bonds. See the Contract Management chapter for more information.

12. Submission of Bids

- a. State law requires (N.J.S.A. 40A:11-23b) that bids shall be received by the contracting unit (Subrecipient) at a specified time, date and place, unsealed and announced. No bids may be accepted if it is late.
- b. The bid shall be submitted in a sealed envelope: (1) addressed to the owner (Subrecipient), (2) bearing the name and address of the bidder written on the face of the envelope, and (3) clearly marked "BID" with the contract title and/or bid # of the contract being bid.
- c. It is the bidder's responsibility that bids are presented to the owner at the time and at the place designated. Bids may be hand delivered or mailed; however, the owner disclaims any responsibility for bids forwarded by regular or overnight mail. If the bid is sent by express mail service, the designation in item B above, must also appear on the outside of the express mail envelope. Bids received after the designated time and date will be returned unopened.
- d. All prices and amounts must be written in ink or preferably machine-printed. Bids containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid proposal form, attachment of additive information not required by the specifications, or irregularities of any kind, may be rejected by the owner. Any changes, whiteouts, strikeouts, etc. in the bid must be initialed in ink by the person signing the bid.
- e. Each bid proposal form must give the full business address, business phone, fax, e-mail if available, the contact person of the bidder, and be signed by an authorized representative as follows:
 - Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing.
 - Bids by corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the president, secretary or other person authorized to bind the corporation in the matter.
 - Bids by sole-proprietorship shall be signed by the proprietor.
 - When requested, satisfactory evidence of the authority of the officer signing shall be furnished.
- f. Bidders should be aware of the following statutes that represent "Truth in Contracting" laws:
 - N.J.S.A. 2C:21-34, et seq. governs false claims and representations by bidders. It is a serious crime for the bidder to knowingly submit a false claim and/or knowingly make material misrepresentation.
 - N.J.S.A. 2C:27-10 provides that a person commits a crime if said person offers a benefit to a public servant for an official act performed or to be performed by a public servant, which is a violation of official duty.

- N.J.S.A. 2C:27-11 provides that a bidder commits a crime if said person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant.
 - Bidder should consult the statutes or legal counsel for further information
- g. All bids received prior to the opening of bids must remain sealed and in a safe place until the bid opening.
- h. Section 3
1. Procurement by sealed bids (Invitations for Bids). Preference in the award of Section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:
 - a. Bids shall be solicited from all businesses (Section 3 business concerns, and non-Section 3 business concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid:
 - i. is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and
 - ii. is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

<i>If the Lowest Bid is</i>		<i>X = lesser of</i>	
At Least	But Less Than		
\$100,000	N/A	10%	\$9,000
\$100,000	\$200,000	9%	\$16,000
\$200,000	\$300,000	8%	\$21,000
\$300,000	\$400,000	7%	\$24,000
\$400,000	\$500,000	6%	\$25,000
\$500,000	\$1,000,000	5%	\$40,000
\$1,000,000	\$2,000,000	4%	\$60,000
\$2,000,000	\$4,000,000	3%	\$80,000
\$4,000,000	\$7,000,000	2%	\$105,000
\$7,000,000		1.5%	

- b. If no responsive bid by a Section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

2. Each bidder must submit to the NJEDA's Section 3 Coordinator a Section 3 Plan for review and approval in order to be considered a qualified bidder. **(SEE EXHIBIT 3-1, BID PACKET FOR CONSTRUCTION CONTRACTS, SAMPLE FORMS and CERTIFICATIONS, SECTION 3 PLAN TEMPLATE)**

Notwithstanding the above, any or all bids may be rejected when there are sound documented business reasons in the best interest of the CDBG- Disaster Recovery Program.

13. Public Bid Opening

All bid openings must be conducted according to N.J.S.A.40A:11-1 et seq.

The following provides general guidance:

- A. The bids should be read aloud during bid opening and the apparent low bidder should be determined during the bid opening.
- B. Bids must also be reviewed for both technical and legal responsiveness of bids. The contract must be awarded to the **lowest, responsible and responsive bidder**.
- C. The bidders must be evaluated as having the capacity to furnish products and/or services required.
- D. Minutes of the bid opening, along with a tabulation of bids, should be placed in the contract file with a copy sent to NJEDA.
- E. The municipality must submit the following documentation to EDA for the project file:
 1. Bid Advertisement with date and method of publication shown;
 2. A copy of the bid package, including specifications and drawings provided;
 3. Copies of all bids received and bid tabulation sheet;
 4. Resolution(s) to enter into contract and/or any resolutions pertaining to the construction procurement process;
 5. A copy of the contract(s) entered into; and
 6. A statement from the purchasing official stating their determination of how the contract meets State Procurement Law.

After the bid opening, the Subrecipient must take action to award the contract or reject all bids within such time as may be specified in the invitation to bid, but in no case more than 60 days. The Subrecipient and the lowest responsible bidder may, by mutual written consent, agree to extend the deadline for award by one or more extensions of 30 calendar days.

14. Verification of Contractor/Professional Eligibility

Pursuant to N.J.A.C. 17:19-4.1 et seq. and prior to awarding the contract, the NJEDA must ensure that all contractors receiving Disaster Recovery CDBG funds meet all eligibility requirements. Certification by Sub-recipient's Contractors, and subcontractors, that such Contractors and subcontractors are not on the List of Parties Excluded from Federal Procurement or Nonprocurement Programs promulgated in accordance with Federal Executive Orders 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24 (CDBG funds may not be provided to excluded or disqualified persons). The following steps shall be taken to verify and document contractor eligibility for all services procured.

- A. Prime Contractor and Subcontractor Clearance: Prior to the award of a construction contract with a prime contractor, the NJEDA shall obtain prime contractor as well as subcontractor clearances. To obtain clearances, the following steps will be taken:
 - a. Prior to Contract award, the Subrecipient must submit separate *Verification of Contractor Eligibility* forms (Appendix 2, Exhibit 2-2) to NJEDA for the prime contractor and all subcontractors. The NJEDA will search the following web sites: <https://www.sam.gov/portal/public/SAM/>. <http://www.nj.gov/treasury/debarred>.
 - b. The search of these web sites only determines whether the contractors are debarred; other types of performance information are not gathered.
 - c. The NJEDA will complete the bottom portion of *Verification of Contractor Eligibility* Form (Exhibit 2-2) and maintain in the project file.
- B. Consulting and/or A/E firms shall also be cleared through websites listed above. The Subrecipient shall submit the *Verification of Professional Services Eligibility* form (Appendix 2, Exhibit 2-1) to NJEDA for clearance as stated previously in this chapter.

15. Method of Contract Award

The contract must be awarded to the lowest, responsible and responsive bidder. If the contract is awarded to other than the lowest bidder, a written statement documenting valid reasons why the lowest bidder(s) was not selected must be prepared and submitted to NJEDA for approval prior to contract award. Ensure that all compliance provisions and environmental clearances have been met before awarding the contract.

The Subrecipient must submit a completed Notice of Contract Award form to the NJEDA for all prime contracts. This form must be received by the NJEDA within 30 days after award. This form, along with instructions, is provided as Exhibit 2-3. Along with the Notice of Contract Award the Subrecipient must send a Certified and Itemized Bid Tabulation, which is a listing of bidders and bid amounts for the project.

16. Causes for Rejecting Bids

Bids may be rejected for any of the following reasons:

- A. All bids pursuant to N.J.S.A. 40A:11-13.2;
- B. If more than one bid is received from an individual, firm or partnership, corporation or association under the same name;
- C. Multiple bids from an agent representing competing bidders;
- D. The bid is inappropriately unbalanced;
- E. The bidder is determined to possess, pursuant to N.J.S.A. 40A:11-4b, Prior Negative Experience; or,
- F. If the successful bidder fails to enter into a contract within 21 days, Sundays and holidays excepted, or as otherwise agreed upon by the parties to the contract. In this case at its option, the owner may accept the bid of the next lowest responsible bidder. (N.J.S.A. 40A:11-24b)
- G. Incomplete or unsatisfactory Section 3 Plan

APPENDIX 1

Contents

Exhibit 1-1: [Supplemental Information for Bidders of Competitive Sealed Bids](#)

EXHIBIT 1-1

SUPPLEMENTAL INFORMATION FOR BIDDERS of COMPETITIVE SEALED BIDS

(The information below is numbered to correlate to the corresponding information provided in the body of Chapter II- “Procedural Steps and Requirements for Competitive Sealed Bids”)

5. Interpretation and Addenda

Any bidder requesting interpretation of the specifications should do so in writing. The owner may issue an addendum to the specifications.

Any bidder challenge to the specifications must be submitted in writing not less than three (3) business days prior to the scheduled bid opening.

No oral interpretation should be given to any potential bidder.

6. Brand Names, Standards of Quality and Performance

The use of “brand name or equivalent” in a bid specification allows a vendor to submit the brand named item or one that is equivalent to that item. The public contracts laws and regulations provide a procedure to follow when deciding to use “brand name or equivalent.” Use of these procedures encourages free, open, and competitive bidding as intended under the public contracts laws.

Before using “brand name or equivalent” in bid specifications, the following procedures shall be considered initially:

The contracting agent should consider the use of a specification based on a standard issued by a national or international testing or standards setting organization.

The contracting agent should consider using generic specifications available through commercial or non-commercial services.

The contracting agent should consider using a specification based on specialized programs.

If the above procedures are not used, a contracting unit can decide to use “brand name or equivalent” if the contracting agent knows that at least one equivalent exists. If the contracting agent does not know if at least one equivalent exists, the item is proprietary and the rules for use of proprietary items must be used. [N.J.S.A. 40A:11-13(d) and N.J.A.C. 5:34-9.1 and 9.2]

Prior to advertising for receipt of bids that includes proprietary goods or services, the contracting agent or purchasing agent shall certify in writing to the CEO an explanation of why goods or services are of a specialized nature and necessary for the conduct of the affairs of the local contracting unit. The resolution shall include a description of why goods or services are of a specialized nature and necessary for the conduct of the affairs of the local contracting unit. In both these cases, when making the explanation, do not paraphrase the statute or regulations, be precise as to the situation being addressed [N.J.A.C. 5:34-9.1(b) and (c)]

If the “brand name or equivalent” is used and a bidder proposes an equivalent, the burden rests with the bidder to demonstrate equivalency through the submission of documentation. Mere submission of company or product literature is unacceptable and can be used as a basis for rejection of the claim of equivalence and the bid.

Pre-approval or pre-qualification of equivalent products by the contracting unit before submission of bids is an anti-competitive practice and not allowed.

This does not absolve the owner of the need to determine compatibility and suitability.

It is recommended that inspection be made upon delivery, installation or performance of service. Owner should serve written notice to the vendor/contractor upon discovery of defect or non-performance, a copy of which should be forwarded to the surety if a performance bond has been required. Request for payment should not be processed until the matter is satisfactorily resolved.

8. Pricing Information for Preparation of Bids

The owner can authorize the successful contractor to use the Subrecipient's tax identification number to eliminate sales tax liability to the contractor if the contractor is purchasing items to be used for the owner's project that is otherwise exempt from sales taxes.

If the owner waives the cost of permit or other fees, it should be noted in this section of Instructions to Bidders.

"FOB destination" should be the preferred method for local contracting units.

When "free on board (F.O.B.) shipping point" is used, the title or ownership of the goods passes from the seller to the buyer (owner) at the moment of delivery to the carrier. Goods are put into the hands of the carrier or loaded in the carrier's vehicle free of expense to the buyer, with delivery to the carrier constituting delivery to the buyer. The buyer must pay all freight and incidental charges required to effect delivery and bears the burden of recovering the value for loss or damage incurred after delivery to the carrier.

When "F.O.B. destination" is specified, title or ownership of the goods passes to the buyer (owner) upon delivery to the owner's designated point. The seller must pay all freight and incidental charges required to effect delivery and is responsible for any loss or damage up to time of delivery.

12. Submission of Bids

The public advertisement shall include specific information, which can subsequently be expanded in general instructions. The specific information includes: who is requesting bids; what is being bid; how are bids to be submitted; where and when will bids be opened; is there a cost for specifications; where will bids be submitted; and will there be a pre-bid conference?

Fees for specifications are at the owner's option. It is recommended that any reference be deleted if fees are not being charged. Fees are most often used to offset the costs of reproduction of plans and specifications (i.e., construction plans or engineering drawings) and cannot be used as a barrier or a way to limit the number of bidders).

Affirmative Action language shall be included in the advertisement. There is no exception to this requirement. "Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27."

If your contracting unit requires the use of pre-printed envelopes or labels, Section I, "Submission of Bids" would be the appropriate location for the additional requirement.

Honoring requests for bid withdrawal prior to bid opening should be dictated by local policy.

State law requires (N.J.S.A. 40A:11-23b) that bids shall be received at a specified time, date and place, unsealed and announced. Deviations to this standard are rare, fact sensitive, and narrow in the application of the statutory provisions of the law. It is strongly recommended that the owner consult with legal counsel on the application of the statutory provisions of law and reported court cases impacting N.J.S.A. 40A:11-23b.

It is generally acceptable policy that there be no determination of an award or rejection of bids after the bids are opened. Any information divulged at the bid opening is not a final determination and is subject to the final action of the governing body. If the bids are open at a governing body's meeting with the intent to award a contract, the bids should be carefully reviewed by the appropriate local officials to ensure compliance with all statutory, regulatory, and specification requirements.

Bids must be properly submitted and executed in accordance with the owners instructions. Material deviations or alterations may be grounds for rejection.

APPENDIX 2 - Subrecipient Forms

Contents

- Exhibit 2-1: [Verification of Professional Services Eligibility](#)
- Exhibit 2-2: [Verification of Contractor Eligibility](#)
- Exhibit 2-3: [Notice of Contract Award](#)
- Exhibit 2-4: [Certification of Subrecipient and General Contractor Affirmative Action / EEO/ Section 3/ Prevailing Wage SWMVBES Addendum to Construction Contracts and Bid Documents](#)
- Exhibit 2-5: [Certification of Subrecipient NCR Federal Labor Standards Provisions – Davis Bacon Act and “Related Acts”](#)

EXHIBIT 2-1

VERIFICATION OF PROFESSIONAL SERVICES ELIGIBILITY

**Please attach a copy of firm's Business Registration Certificate (BRC) to this form.*

1. Request for Clearance of Professional Services is hereby made by:

Name of Subrecipient _____

CDBG-DR Number _____

2. Identification of the professional firm for which clearance is requested:

Legal Business Name _____

DUNS number _____

Street Address, City, _____

State, and Zip Code _____

Phone Number(s) _____

3. Name of the principles of the firm and their title/position are as follows.

(Complete names preferred: Example—John Buford Brown is preferable to John Brown)

Name of Principals	Title(s)
_____	_____
_____	_____

4. Description of professional services? _____

5. Signed: _____ Date _____

City/Municipality CEO or Representative

6. (To be completed by the NJEDA)

Professional firm cleared: Yes No Date: _____

Signature, NJEDA's staff _____

Faxed or Mailed To _____

Comments: _____

EXHIBIT 2-2

Verification of Contractor Eligibility

(For use by Prime Contractor and all Subcontractors)

Verification of Contractor Eligibility		
Please Note: Verifications must be obtained prior to award of contract		
1.	Subrecipient/Owner Name	
2.	Disaster Recovery CDBG Contract Number/Loan Number	
3.	County	
4.	Bid Opening Date	
<ul style="list-style-type: none"> • Identification of the contractor and principals of the firm. 		
5.	Contractor Legal Business Name	
6.	DUNS number	
7.	Address	
8.	City	
9.	State	
10.	Zip Code	
11.	Contractor Phone Number	
12.	Enter the name of each principal below	Enter the title of each principal
13.		
14.		
15.		
<ul style="list-style-type: none"> • Signature and dates below indicate verification by NJEDA 		
16.	Contractor's eligibility performed by	(Print)
		(Sign)
		(Date)

Instructions for Verification of Contractor Eligibility (Exhibit 2-2)

Note: This form must be executed before the award of a contract.

1-3. Name, Contract #, County	Name of grant Subrecipient/Owner, Disaster Recovery CDBG contract #/Loan #, County
4. Bid Opening Date	The date construction bids were opened
5.-11. Contractor Identification	The legal name of the contracting firm. Address, & Phone
12.-15. Identification and titles of Principals of the firm	Since the names are checked against a federal database of debarred names, list the complete name if possible. In the case of corporations, “Principals” are owners or office holders as recorded legally. In sole proprietorships or partnerships, “Principals” are the owner(s). Titles or Position: Examples—President, Vice Pres, Secretary.
16. Identification of NJEDA staff performing contractor eligibility verification	The name and signature of the NJEDA staff who verifies the contractor’s eligibility; date which the verification was performed

EXHIBIT 2-3

NOTICE OF CONTRACT AWARD

1. The CDBG- Disaster Recovery:

Subrecipient (Owner) Name _____
CDBG-DR # _____

2. A prime construction contract has been awarded as follows:

Name of prime contractor _____
Type of work to be done _____
Bid Opening Date _____
Date of contract award _____
Estimated date of start of construction _____

3. Components of the above listed contract identified by source, purpose and amount:

<u>Source</u>	<u>Purpose</u>	<u>Amount</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Total Amount of Contract Award (All funds—Local, CDBG, etc.) _____

5. A copy of the certified and itemized bid tabulation is attached: Yes _____ No _____

6. Comments: _____

7. Signed _____
Subrecipient's Labor Compliance Officer or
CEO

8. Date _____

Instructions for Notice of Contract Award (Exhibit 2-3)

1. Subrecipient (Owner) Name CDBG-DR Number	Name of Municipality or Town that is the Subrecipient of grant funds. Six-digit project number between NJEDA and grant Subrecipient.												
2. A prime construction contract	Name: of prime contractor. Work Description: Examples: streetscape, facade, etc. Bid Opening Date: self-explanatory. Date of Award: official date by action of municipality. Estimate: an educated guess on start date of construction.												
3. Components of the above listed contract...source, purpose, & amount	<p>Components of the construction contract must be identified by source, purpose and amount. Example:</p> <table border="1" data-bbox="565 625 1390 762"> <thead> <tr> <th><u>Source</u></th> <th><u>Purpose</u></th> <th><u>Amount</u></th> </tr> </thead> <tbody> <tr> <td>CDBG</td> <td>Sewer lines, engineering</td> <td>500,000.00</td> </tr> <tr> <td>USDA</td> <td>Sewer treatment plant</td> <td>300,000.00</td> </tr> <tr> <td>Local</td> <td>Engineering</td> <td>50,000.00</td> </tr> </tbody> </table> <p>Some construction contracts involve only CDBG funds and have a single purpose. For such cases, use only a one-line entry.</p>	<u>Source</u>	<u>Purpose</u>	<u>Amount</u>	CDBG	Sewer lines, engineering	500,000.00	USDA	Sewer treatment plant	300,000.00	Local	Engineering	50,000.00
<u>Source</u>	<u>Purpose</u>	<u>Amount</u>											
CDBG	Sewer lines, engineering	500,000.00											
USDA	Sewer treatment plant	300,000.00											
Local	Engineering	50,000.00											
4. Total amount of contract award	<p>Components amounts added together should equal the total of the prime construction contract referred to under item “2”.</p> <p>From the example in “3”, above, the total would be \$850,000.00.</p> <p>Enter the original amount of the award prior to any change orders.</p>												
5. Copy of the Certified and Itemized Bid Tabulation attached	A bid tabulation should be attached to this notice. Indicate whether the bid tab is attached by marking “yes” or “no”. If no, explain why in the comment section of row 6 and, as necessary, establish a projected time table for the bid tabulation to be sent to NJEDA.												
6. Comments	Enter any applicable comments.												
7. Signature or typed name	Signature or typed name of the Subrecipient’s Labor Compliance Officer.												
8. Date	Date on which the form is prepared (not the contract award date). It must be sent to NJEDA within 30 days of the award of the contract.												

EXHIBIT 2-4

**Certification of Subrecipient and General Contractor Affirmative Action / EEO/Section 3/
Prevailing Wage SWMVBES Addendum to Construction Contracts and Bid Documents**

NJEDA OFFICE OF RECOVERY - DISASTER RECOVERY CDBG - SANDY
THIS PROJECT IS SUBJECT TO FEDERAL AND STATE PREVAILING WAGE AND EEO REQUIREMENTS

Sandy EEO Bid Form -3

**SUBRECIPIENT AND GENERAL CONTRACTOR
AFFIRMATIVE ACTION / EEO / SECTION 3 / PREVAILING WAGE/SWMVBES ADDENDUM
TO CONSTRUCTION CONTRACTS AND BID DOCUMENTS**

NJEDA PROJECT #: _____
PROJECT NAME: _____
DATE OF ACTUAL OR PROJECTED CONTRACT AWARD TO PRIME CONTRACTOR: _____

I/We, the undersigned certify to the New Jersey Economic Development Authority that the Authority's "Affirmative Action-EEO/Section 3/Prevailing Wage / SWMVBES Addendum to Construction Contract and Bid Documents" will be included as part of all bid documents and construction contracts and be signed **by each** of the following in the signature boxes below:

- 1.) The NCR Subrecipient or SBL Borrower, i.e. the applicant and project owner receiving DR CDBG financial assistance
- 2.) The General Contractor, Prime Contractor, or Construction Manager that is responsible for coordinating subcontractors

1. NCR SUBRECIPIENT OR SBL BORROWER	1a.) Subrecipient or Borrower Name coordinating with the General Contractor and Subcontractors	
	1b.) Mailing Address of Subrecipient or Borrower (Street Address / P.O./ City / State/ Zip)	
	1d.) Name and Title of Authorized Signatory of the Subrecipient or Borrower above in 1a.	1c.) Phone: _____
	X	
	1e.) Signature of Authorized Person (Please sign in blue ink above)	1f.) Date of Signature
	1g.) Phone: _____	
	1h.) Name of Person in Payroll, Accounting, etc. responsible for preparing monthly reports	

2. GENERAL CONTRACTOR, PRIME OR CONSTRUCTION MGR.	2a.) Company Name of General Contractor, Prime Contractor, or Construction Mgr. coordinating all subcontractors	
	2b.) Mailing Address of General Contractor, Prime Contractor, or Construction Mgr. (Street Address / P.O./ City / State/ Zip)	
	2d.) Name and Title of Authorized Signatory of the General Contractor, Prime Contractor or Construction Mgr. above in 2a.	2c.) Phone: _____
	X	
	2f.) Signature of Authorized Person (Please sign in blue ink above)	2e.) Phone: _____
	2g.) Phone: _____	
	2h.) Name of Person in Payroll, Accounting, etc. responsible for preparing monthly reports	



**THIS DOCUMENT MUST BE SIGNED BY THE SUBRECIPIENT AND
GENERAL CONTRACTOR AS PART OF COMPLIANCE**

SUBMIT TO: LYOUNG@NJEDA.com or: NJEDA - PO Box 990 - Trenton, NJ 08625-0990

EXHIBIT 2-5

Certificate of Subrecipient – Federal Labor Standards

**CERTIFICATION OF SUBRECIPIENT
NEIGHBORHOOD COMMUNITY REVITALIZATION (NCR)
FEDERAL LABOR STANDARDS PROVISIONS - DAVIS-BACON ACT and "RELATED ACTS"
INSTRUCTIONS**

Subrecipient

This certification is required to insure that the Subrecipient understands that the Project or Program to which the construction work covered by any construction greater than \$2,000, is being assigned by the United States of America and that the various Federal Labor Standards Provisions, summarized in the form HUD-4010, "Federal Labor Standards Provisions" are included in any such contract, pursuant to the provisions applicable to such Federal assistance. In addition, the Subrecipient also understands that they are also subject to the New Jersey State Prevailing Wage Act and Regulations (N.J.S.A. 34:11 - 56.25). The higher of the two wage rates shall be the wage rate used. Nothing, however, shall prohibit the payment of more than the prevailing wage rate to any construction worker employed on the construction project.

Furthermore, the Subrecipient understands and agrees that form HUD-4010, "Federal Labor Standards Provisions", must be included and attached to each and every construction bid document and/or construction contract greater than \$2,000, that is subject to the Davis-Bacon Act and "Related Acts" and the New Jersey State Prevailing Wage Act and Regulations (N.J.S.A. 34:11 - 56.25).

Wage Determinations - Federal prevailing wage rates for construction labor cost estimates can be obtained from the Wage Determinations Online system:

<http://www.wdol.gov/>

State of New Jersey prevailing wage rates may be obtained from the New Jersey Department of Labor and Workforce Development, Office of Wage and Hour Compliance at:

http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevailing_wage_determinations.html

Wage Determination Posting - Contractors and sub-contractors shall post the prevailing wage rates for each craft and classification in a prominent and easily accessible place at the site of the work, or at such places as are used by them to pay workers.

The undersigned is required to ensure that all specifications and/or contracts include all applicable Federal and State of New Jersey wage rate determinations and the required labor standards provisions summarized by form HUD-4010, "Federal Labor Standards Provisions."

Weekly Certified Payrolls - It is the responsibility of each contractor and sub-contractor to submit weekly certified payrolls for project work (<http://www.dol.gov/whd/forms/wh347.pdf>)

CERTIFICATION BY Subrecipient

NAME AND ADDRESS OF Subrecipient (Include ZIP Code):

NAME AND TITLE OF SIGNER (Please print or type below):

SIGNATURE

DATE

SUBMIT TO: lyoung@njeda.com - or: to NJEDA - PO Pox 990 Trenton, NJ 08625-0990 Attn: Labor Compliance Officer

APPENDIX 3

Sample Bid Forms

Contents

Exhibit 3-1: Bid Packet for Construction Contracts- Sample Forms and Certifications

EXHIBIT 3-1

BID PACKET FOR CONSTRUCTION CONTRACTS

SAMPLE FORMS and CERTIFICATIONS

This does not represent all of the required content of the bid packet. It provides **samples** of forms (as designated) as well as required Certifications. Example: plans and specifications, maps, etc. are not included here, but must be a part of the total bid packet. Subrecipients typically include a sample form of contract to be used with the required Terms and Conditions, Compliance Provisions and General Conditions attached for Contractor reference. **Subrecipients must verify that all forms included in their bid documents are applicable to their specific project.**

- [Advertisement for Bids](#)
- [Information for Bidders](#)
- [Bid Bond](#)
- [Bidder Qualifications](#)
- [NJEDA SWMVBEBidders Form 1- General Contractor's Schedule of Small, Women's, Minority and Veteran owned Business Enterprise Utilization worksheet](#)
- [Section 3 Plan Template](#)
- [NJEDA Project Wage Rate Sheet](#)
- [Affirmative Action Form 1](#)

ADVERTISEMENT FOR BIDS (Sample)

Project No. _____

(Owner)

Separate sealed bids for _____ for will be received by _____ at the office of _____ until _____ o'clock (A.M. _____ P.M. _____ S.T. _____ DST) _____, 20 _____, and then at said office publicly opened and read aloud.

The Information for Bidders, Form of Bid, Form of Contract, Plans, Specifications, and Forms of Bid Bond, Performance and Payment Bond, and other contract documents may be examined at the following:

Copies may be obtained at the office of _____ located at _____ upon payment of \$ _____ for each set. Any unsuccessful bidder, upon returning such set promptly and in good condition, will be refunded his payment, and any non-bidder upon so returning such a set will be refunded \$ _____.

The owner reserves the right to waive any informalities or to reject any or all bids.

Each bidder must deposit with his bid security in the amount, form and subject to the conditions provided in the Information for Bidders.

Attention of bidders is particularly called to the requirements as to conditions of employment to be observed and minimum wage rates to be paid under the contract, Section 3, Segregated Facility, Section 109, and E.O. 11246.

No bidder may withdraw his bid within 30 days after the actual date of the opening thereof.

(Date)

INFORMATION FOR BIDDERS (Sample)

1. Receipt and Opening of Bids

The _____ (herein called the "Owner"), invites bids on the form attached hereto, all blanks of which must be appropriately filled in. Bids will be received by the Owner at the office of _____ until _____ o'clock a.m./p.m., _____ EST, _____ 20 _____, and then at said office publicly opened and read aloud. The envelopes containing the bids must be sealed, addressed to _____ at _____ and designated as bid for _____.

The Owner may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within 30 days after the actual date of the opening thereof.

2.Preparation of Bid: Each bid must be submitted on the prescribed form and accompanied by Certification by Bidder Regarding Equal Employment Opportunity, Certification of Bidder Regarding Section 3 and Segregated Facilities. All blank spaces for bid prices must be filled in, in ink or typewritten, in both words and figures, and the foregoing Certifications must be fully completed and executed when submitted.

3. Subcontracts: The bidder is specifically advised that any person, or other party, to whom it is proposed to award a subcontract under this contract:

- a. Must be acceptable to the owner after verification by the contractor of the current eligibility status; and
- b. Must submit Certification by Proposed Subcontractor Regarding Equal Employment Opportunity, and Certification of Proposed Subcontractor Regarding Section 3 and Segregated Facilities. Approval of the proposed subcontract award cannot be given by the Owner unless and until the proposed subcontractor has submitted the Certifications and/or other evidence showing that it has fully complied with any reporting requirements to which it

is or was subject. Although the bidder is not required to attach such Certifications by proposed subcontractors to his bid, the bidder is here advised of this requirement so that appropriate action can be taken to prevent subsequent delay in subcontract awards.

4. Method of Bidding: The Owner invites the following bid(s): _____

5. Qualifications of Bidder: The Owner may make such investigations as he deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the owner that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

6. Bid Security: Each bid must be accompanied by a bid bond payable to the Owner for ten percent of the total amount of the bid. As soon as the bid prices have been compared, the Owner will return all of the bonds except the three lowest responsible bidders. When the agreement is executed the bonds of the two remaining unsuccessful bidders will be returned. The bid bond of the successful bidder will be retained until the payment bond and performance bond have been executed and approved, after which it will be returned. A certified check may be used in lieu of a bid bond.

7. Liquidated Damages for Failure to Enter into Contract: The successful bidder, upon his failure or refusal to execute and deliver the contract and bonds required within 10 days after he received notice of the acceptance of his bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his bid.

8. Time of Completion and Liquidated Damages: Bidder must agree to commence work on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within _____ consecutive calendar days thereafter. Bidder must agree also to pay as liquidated damages, the sum of \$ _____ for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

9. Conditions of Work: Each bidder must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his contract. Insofar as possible the contractor, in carrying out the work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor.

10. Addenda and Interpretations: No interpretation of the meaning to the plans, specifications, or other pre-bid documents will be made to any bidder orally.

Every request for such interpretation should be in writing addressed to _____ at _____ and to be given consideration must be received at least five days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed by certified mail with return receipt requested to all prospective bidders (at the respective addresses furnished for such purposes), not later than three days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so insured shall become part of the contract documents.

11. Security for Faithful Performance: Simultaneously with his delivery of the executed contract, the Contractor shall furnish a surety bond or bonds as security for faithful performance of this contract and for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract, as specified in the General Conditions included herein. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to the Owner.

12. Power of Attorney: Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

13. Notice of Special Conditions: Attention is particularly called to those parts of the contract documents and specifications which deal with the following:

- a. Inspection and testing of materials
- b. Insurance requirements
- c. Wage rates
- d. Stated allowances

14. Laws and Regulations: The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

15. Method of Award - Lowest Qualified Bidder: If at the time this contract is to be awarded, the lowest base bid submitted by a responsible bidder does not exceed the amount of funds then estimated by the Owner as available to finance the contract; the contract will be awarded on the base bid only. If such bid

exceeds such amount, the Owner may reject all bids or may award the contract on the base bid combined with such deductible alternates applied in numerical order in which they are listed in the Form of Bid, as produces a net amount which is within the available funds.

16. Obligation of Bidder: At the time of the opening of bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the plans and contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect or his bid.

17. Safety Standards and Accident Prevention: With respect to all work performed under this contract, the contractor shall:

- a. Comply with the safety standards provisions of applicable laws, building and construction codes, and the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970 (Public Law 91-596), and the requirements of Title 29 of the Code of Federal Regulations, Section 1518 as published in the "Federal Register", Volume 36, No. 75, Saturday, April 17, 1971.
- b. Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- c. Maintain at his office or other well known place at the job site, all articles necessary for giving first aid to the injured, and shall make arrangements for the immediate removal to a hospital or a doctor's care of persons (including employees), who may be injured on the job site. In no case shall employees be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or a doctor's care.

BID BOND (Sample)

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____ as Principal, and _____ as Surety, are hereby held and firmly bound unto _____ as owner in the penal sum of _____ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns, this _____ day of _____, 20 ____.

The condition of the above obligation is such that whereas the Principal has submitted to _____ a certain Bid, attached hereto and hereby made a part hereof to enter into a contract in writing, for the _____

_____ .

NOW, THEREFORE,

1. If said Bid shall be rejected, or in the alternate,
2. If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said Bid) and shall furnish a bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, shall in all other respects perform the agreement created by the acceptance of said Bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by the extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

BIDDER QUALIFICATIONS (Sample)

Firm Name: _____

(Company Name)

(Address)

(City, State, Zip Code)

(Phone #)

(Fax #)

(E-mail)

Date: _____

Construction Capabilities:

(Check all that apply)

General Contracting

Electrical

Plumbing

HVAC

Demolition

Other (specify)

Asbestos Abatement

Paving

For Corporations Only:

Federal ID Number: _____

Name of State(s) in which incorporated: _____

Date(s) of incorporation: _____

If not incorporated in New Jersey:

1. Attach Certificate of Authority to do Business in New Jersey

2. Certificate Number: _____ Date: _____

(President's Name)

(Vice-President's Name)

(Secretary's Name)

(Treasurer's Name)

For Partnerships Only:

Date of Organization: _____

Type of Partnership:

General

Limited

Association

Names and Addresses of all partners: (use additional sheet if necessary)

1. _____
(Name) (Address) (City, State, Zip Code)

2. _____
(Name) (Address) (City, State, Zip Code)

General Information:

Federal ID Number: _____ or SSN: _____

Percent of work done by Contractor: _____ Number of Permanent Employees: _____

Number of years in business: _____

Geographical limits of operation: _____

If you have done business under a different name, please give name and location: _____

Has firm ever failed to complete a project or defaulted on a contract? If so, state where and why: _____

Date: Dated _____ this day of _____, 20_____.

Signatures:

Individual Partnership Joint Venture Corporation

Address: _____

Telephone: _____ Fax Number: _____

Federal ID Number: _____ SSN: _____

Incorporated under the laws of the State of: _____

(If a corporation organized in a state other than New Jersey, attach certificate of Authority to do business in the State if New Jersey.)

(Bidder's Signature)

(Corporate Secretary's Signature and Seal)

(Typed or printed name(s))

(Seal)

**GENERAL CONTRACTOR'S SCHEDULE OF SMALL, WOMEN'S, MINORITY,
AND VETERAN OWNED BUSINESS ENTERPRISE
UTILIZATION WORKSHEET
SANDY CDBG-DR ECONOMIC REVITALIZATION**

This form to be submitted before contract execution :

GRANT OR LOAN APPLICANT:		DATE:	
NAME OF PROJECT:		PROJECT NO. (5 DIGITS)	
NAME OF GENERAL CONTRACTOR:		TAX ID NO. (9 DIGITS)	
ADDRESS, CITY, STATE AND ZIP:			
CONTACT NAME:		PHONE NUMBER:	
CONTRACT AMOUNT (\$):		PROJECTED CONTRACT EFFECTIVE DATE:	

SBE % OF CONTRACT: _____ MBE % OF CONTRACT _____ WBE % OF CONTRACT _____ VOB % of CONTRACT: _____

NAME OF MBE, WBE, SBE OR VBO CONTRACTOR OR SUBCONTRACTOR	Address, City, ST, ZIP	Contact Person	Tax ID Number	Scope of Work or Description of Trade, Service or Supply	ACTUAL DOLLAR AMOUNT OF SUBCONTRACT	SBE (Y or N)	MBE (Y or N)	WBE (Y or N)	VBO (Y or N)
				TOTAL					

GENERAL CONTRACTOR - PRINT NAME

SWMBE LIAISON OFFICER

PHONE NUMBER

E-MAIL ADDRESS

BIDDERS SECTION 3 PLAN FORMAT TEMPLATE
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Office of Recovery
P.O. Box 990 - Trenton, NJ 08625-0990

Forms available at: <http://www.njeda.com/affirmativeaction>

If award is received, _____ (name of contractor) agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within the County of _____.

1. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area, and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
2. To attempt to recruit from within the city the necessary number of lower income residents through local advertising media, signs placed at the proposed site for the project area, and community organizations, and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
3. To maintain a list of lower income area residents who have applied either on their own or on referral from any source, and employ such persons, if otherwise eligible and if a vacancy exists.
4. To insert the Section 3 Clause Contract Provisions in all subcontracts over \$100,00, to obtain all forms from said subcontractors, and to obtain all documentation for completion of prior to final payment. (Loans, grants, contracts, and subsidies for less than \$100,000 will be exempt).
5. To contact unions, subcontractors, and trade associations to secure their cooperation for this program
6. To ensure that all appropriate project area business concerns are notified of pending sub contractual opportunities.
7. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative steps have been taken.
8. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 plan.
9. To list information related to proposed subcontracts to be awarded to Section 3 businesses.
10. To list all projected workforce needs for all phases of this project by occupation, trade, skill level and number of positions.

As officers and representatives of _____, (Name of Bidder) we, the undersigned, have read and fully agree this Affirmative Action Plan, and become a party to the full implementation of this program.

Signature

Title of Signer (Print or Type): _____ Date _____

Signature

Title of Signer (Print or Type): _____ Date _____

NJEDA AA Form 1

NJEDA AA Form 1	OFFICE OF RECOVERY 38 West State Street - PO Box 990 Trenton, NJ 08625-0990 (609) 858-8947 phone * (609) 278-4627 fax * LYoung@njeda.com * email	Revised 2013 DEC
INITIAL CONSTRUCTION PROJECT WORKFORCE MANNING REPORT (NJEDA AA Form 1)		

MUST BE SUBMITTED TO NJEDA WITHIN 15 BUSINESS DAYS OF CONSTRUCTION PROJECT'S START DATE

1. NJEDA PROJECT No. (5 digits)	2. EDA CONTRACTOR ID NUMBER	5. NAME OF CO. THAT IS RECIPIENT OF DISASTER RECOVERY CDBG ASSISTANCE					
3. NAME AND ADDRESS OF GENERAL CONTRACTOR or CONSTRUCTION MGR.		6. DATE OF AWARD					
(NAME)						7. DOLLAR AMOUNT OF AWARD	
(STREET ADDRESS)							
(CITY)	(ZIP CODE)					8. NAME & ADDRESS OF PROJECT	
4. IS THIS COMPANY AN MBE [] WBE [] SSE []		10. NJ COUNTY that Project is located in:	11. IS THIS PROJECT COVERED BY A PLA? YES or NO				
12. TRADE OR CRAFT	13. TOTAL HEADCOUNT	14. # OF WOMEN (AS A SUBSET OF 13. TOTAL)	15. # OF MINORITIES (AS A SUBSET OF 12. TOTAL)	15. PROJECTED PHASE-IN DATE	16. PROJECTED COMPLETION DATE		
1. ASBESTOS WORKER							
2. ASPHALT WORKER							
3. BOILER MAKER							
4. BRICKLAYER							
5. CARPENTER							
6. CEMENT FINISHERS							
7. DOCK BUILDER							
8. DRILLER							
9. ELECTRICIAN							
10. ELEVATOR CONSTRUCTION							
11. FLOOR LAYER							
12. GLAZIERS							
13. HVAC							
14. IRONWORKER							
15. INSULATION MECHANIC							
16. LABORER							
17. MASON							
18. MECHANIC							
19. MILL WRIGHT							
20. OPERATING ENGINEER							
21. PAINTERS							
22. PIPEFITTERS							
23. PLASTERER							
24. PLUMBER							
25. ROOFER							
26. SHEET METAL WORKER							
27. SPRINKLER FITTER							
28. SURVEYOR							
29. TEAMSTER, TRUCK DRIVER							
30. TELEDATE - ELECTRICIAN							
31. TILE LAYER, TILE SETTER							
32. TAHER							
33. WELDER							
34. OTHER:							
TOTALS:	0	0	0	#DIV/0!	#DIV/0!		
	PROJECTED TOTAL EMPLOYEES	PROJECTED TOTAL WOMEN EMPLOYEES	PROJECTED TOTAL MINORITY EMPLOYEES	PROJECTED PERCENTAGE WOMEN	PROJECTED PERCENTAGE MINORITY		

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

CHAPTER III

CONTRACT MANAGEMENT

1. Introduction

As stated in the Procurement Chapter, recipients of CDBG-DR funds will procure a broad range of materials and services to successfully complete their project activities. Following proper procurement and selection, each of these services will require the execution of a formal and binding contract. This chapter will suggest avenues that the Subrecipient may employ to successfully manage their contracts.

In accordance with the CDBG Disaster Recovery Action Plan (approved by HUD 4/29/2013), the NJEDA has opted to follow the NJ State Laws pertaining to contract management. The Subrecipient shall comply with New Jersey State regulations and requirements regarding contracting with service professional and contractors, including but not limited to Executive Order 125 (Christie 2013).

2. Definition of Terms

Executed Contract Form:	the binding agreement with appropriate signatures of all parties attested and dated.
Certificate of Owner's Attorney:	a record of the local attorney review and acceptance of the terms of the contract.
Or Equal Clause:	language that tells the bidder that any references to brand names are solely for explanation/clarification and that any and all equals are allowed.
Required Levels of Insurance:	information for the bidder listing all necessary types and levels of insurance: worker's compensation, public liability and property damage, vehicle liability, special hazards, builder's risk, etc.
Subcontracting:	a statement of the terms under which any part of the contract may be subcontracted.
Architects/Engineers Authority:	provides information to the contractor that the owner has given the decision-making authority, regarding specifications relative to the contract, to the engineer or architect.
Conflicting Conditions:	when contract documents are found to have two statements in conflict.

Anti-Lobbying, Over \$100,000:	the form preventing the contracted agent from using any of the CDBG funds to lobby a member of Congress.
Specifications:	the exact detail of the work to be completed
Period of Service:	the time for which the contract is valid and the date that the work is to be completed.
Scope of Services:	the detailed activities that the contracted agent is expected to perform for payment under the terms of the contract.
Address of The Work Sites:	the exact project site location(s).
Schedule of Payment:	the allowed drawdown of funds to be paid under the contract (often coincides with the milestones).
Applicable Retainage:	the amount held by the Subrecipient until the project is 100% complete, used as a control device.
Final Inspection:	the act of the responsible party(ies), usually the engineer, to inspect the work completed and recommend final payment.
Engineer/Consultant's Certification for Acceptance and Final Payment:	To be completed by the project engineer once final inspection of all work under the contract documents has been completed in accordance with the drawings and specification and is functioning properly. Recommendation for final payment.
Termination:	the circumstances under which designated parties may terminate the contract, usually described for cause or convenience.
Completion Time/Liquidated Damage:	completion date expectations for work and prescribes level of daily monetary penalty to contractor for days beyond prescribed date.
Records and Audits:	the maintenance of records (personnel, property, and financial) to ensure proper accounting, and the conditions under which they are to be made available.

Common Rules Regarding Contracting (with CDBG-DR monies)

1. All services, professional, or construction, paid in whole or in part with CDBG-DR funds, require the **execution of a formal contract**.
2. The use of CDBG-DR dollars, regardless of the amount, for payment of any service under contract in a grant, initiates the contracting requirements described in this chapter. The total amount of the contract will often indicate the proper documentation to be included in the contract.
3. **All contracts** should contain a clear, concise, and detailed description of the:
 - scope of work
 - total cost
 - duration or life of the contract
 - compliance requirements
 - reporting responsibilities
4. All contracts requesting payment for activities not clearly defined in the scope of services may be denied CDBG-DR funding.
5. It is the responsibility of the Subrecipient to manage all contracts executed for CDBG-DR funded projects.
6. All contracts using CDBG-DR funds for payment must pass a cost reasonableness test.
7. Before the Subrecipient can sign a contract with a proposed contractor or professional service provider, the Subrecipient must ensure that the parties are not on the Federal listing of excluded parties for a federally funded project. See Chapter 2, item 13 for more information on Debarment checks.
8. All professional service contracts and construction contracts paid for with CDBG-DR funds must use firms/businesses that are licensed to operate in the State of New Jersey. No grant funds will be released to pay businesses that do not hold this license.
9. All licensed businesses must be in good standing with the Secretary of State's office if they are to be paid with CDBG-DR funds.
10. The bonding company used by the contractor to provide payment and performance bonds must be listed with the Department of the Treasury's Listing of Approved Sureties.

3. **Forms of Contract** (REVISED 6/10/15)

A. **Professional Services Contracts**

The Subrecipient may use the standard A/E contract templates when executing a contract for professional design services with architectural and engineering firms or other professional services contract. **All professional service contracts shall be based upon a lump sum and must include all the exhibits included in Appendix 5; State of NJ Standard Terms and Conditions (Exhibit 5-1), CDBG General Conditions, as applicable (Exhibit 5-3), and Voluntary Compliance Agreement and Conciliation Agreement (Exhibit 5-4), CDBG Compliance Provisions for Professional Services Contracts (Exhibit 5-5).**

Architectural/ Engineering fees must be reasonable and justifiable. Sole justification that the fees are within the amount allowed by the NJEDA is not adequate. If, after a project has been funded, the scope of the project changes significantly, the NJEDA will make a determination of any additional amount that will be allowed. Justification for additional services shall be provided to NJEDA.

For professional services contracts of at least \$100,000 covered by SANDY- CDBG-DR funding, Section 3 does apply. (See CHAPTER V SECTION 3)

B. **Construction Contracts**

The Subrecipient may use a generic construction contract, but must include all the exhibits included in Appendix 5; State of New Jersey Standard Terms and Conditions (Exhibit 5-1), CDBG Compliance Provisions for Construction Contracts (Exhibit 5-2), CDBG General Conditions, as applicable (Exhibit 5-3), and Voluntary Compliance Agreement and Conciliation Agreement (Exhibit 5-4). **Firm-fixed-price contracts used to acquire construction services must be priced on a lump-sum basis. Cost plus a percentage of cost and percentage of construction cost methods are prohibited.**

C. **Contract Requirements (for Professional Services and Construction, or as noted)**

1. **Bonding Requirements (Construction Contracts Only)**

a. **Performance Bond**

Bidder shall be prepared to simultaneously with the delivery of the executed contract, submit an executed bond in the amount of one hundred percent (100%) of the acceptable bid as security for the faithful performance of this contract.

The performance bond provided shall not be released until final acceptance of the whole work and then only if any liens or claims have been satisfied. The surety on such bond or bonds shall be a duly authorized surety company authorized to do business in the State of New Jersey pursuant to N.J.S.A. 17:31-5.

Failure to submit this with the executed contract shall be cause for declaring the contract null and void pursuant to N.J.S.A. 40A:11-22.

b. Payment Bond

Bidder shall be prepared to simultaneously with the delivery of the executed contract, submit a payment bond on the part of the contractor for one hundred percent (100%) of the contract price. Bidder shall with the delivery of the performance bond submit an executed payment bond to guarantee payment to laborers and suppliers for the labor and material used in the work performed under the contract. A sample Payment Bond is included in Appendix 4.

Failure to submit a labor and material bond with the performance bond shall be cause for declaring the contract null and void.

2. **Insurance and Indemnification**

Construction Coverage Requirements: The Contractor shall procure and maintain at its own expense, throughout the term of the contract and any extensions thereto, liability insurance for damages of the kinds and in the amounts hereinafter provided, from **insurance companies licensed, admitted and approved to do business in the State of New Jersey.** The Vendor shall obtain this coverage from **A-VII or better-rated companies**, as determined by A.M. Best Company. All liability insurance policies shall afford coverage on an occurrence rather than claims made basis, with the exception of the professional liability coverage.

The types and minimum amounts of insurance required are as follows:

- a. **Commercial General Liability Insurance**- The minimum limits of liability for this insurance shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate and cover liability based on property damage, death and bodily injury.
The Commercial General Liability Insurance policy shall provide coverage least as broad as the standard, basic, unamended and unendorsed commercial general liability policy and shall include contractual liability coverage. The policy shall name the New Jersey Economic Development Authority as an additional insured.
- b. **Commercial Automobile Liability Insurance** - The Commercial Automobile Liability policy shall cover any owned, hired or non-owned automobile / vehicle used by the insured with minimum limits for liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
- c. **Workers' Compensation** - Workers' Compensation Insurance shall be maintained in full force during the life of the contract, covering all employees engaged in the performance of the contract pursuant to N.J.S.A. 34:15-12(a) and N.J.A.C. 12:235-1.6.

Professional Liability Insurance: The Vendor shall carry Errors and Omissions and/or Professional Liability Insurance sufficient to protect the Vendor from any liability arising out

of professional obligations performed pursuant to this Contract. The insurance shall be in the amount of \$1,000,000 each claim and in such policy form as shall be approved by the Authority. The policy shall name the New Jersey Economic Development Authority as an additional insured.

Certificates of the required Insurance: Certificates of Insurance for those policies required above shall be submitted with the contract. Such coverage shall be with an insurance company authorized to do business in the State of New Jersey and shall name the owner as an additional insured.

Self-insured contractors shall submit an affidavit attesting to their self-insured coverage and shall name the owner as an additional insured.

Indemnification: Bidder shall indemnify and hold harmless the owner from all claims, suits or actions, and damages or costs of every name and description to which the owner may be subjected or put by reason of injury to the person or property of another, or the property of the owner, resulting from negligent acts or omissions on the part of the contractor, the contractor's agents, servants or subcontractors in the delivery of goods and services, or in the performance of the work under the contract.

3. **Legal Review**

Many cities and counties employ the services of an attorney to write and review all contractual obligations. The Certificate of Owner's Attorney may be required by individual Subrecipient ordinance, resolution, or policy. NJEDA will not provide legal advice to a community, but may provide, at the local request, examples of "standard" contracts and contract language, which may be used in certain situations. **The final decision and responsibility of the terms of the contract lies with the community.**

4. **Termination of Contract**

- a. If, through any cause, the contractor shall fail to fulfill in a timely and proper manner obligations under the contract or if the contractor shall violate any of the requirements of the contract, the owner shall there upon have the right to terminate the contract by giving written notice to the contractor of such termination and specifying the effective date of termination. Such termination shall relieve the owner of any obligation for balances to the contractor of any sum or sums set forth in the contract. Owner will pay only for goods and services accepted prior to termination.
- b. Notwithstanding the above, the contractor shall not be relieved of liability to the owner for damages sustained by the owner by virtue of any breach of the contract by the contractor and the owner may withhold any payments to the contractor for the purpose of compensation until such time as the exact amount of the damage due the owner from the contractor is determined.
- c. The contractor agrees to indemnify and hold the owner harmless from any liability to subcontractors/suppliers concerning payment for work performed or goods supplied arising out of the lawful termination of the contract by the owner under this provision.

- d. In case of default by the contractor, the owner may procure the goods or services from other sources and hold the contractor responsible for any excess cost.
- e. Continuation of the terms of the contract beyond the fiscal year is contingent on availability of funds in the following year's budget. In the event of unavailability of such funds, the owner reserves the right to cancel the contract.
- f. Acquisition, Merger, Sale and/or Transfer of Business, etc.: It is understood by all parties that if, during the life of the contract, the contractor disposes of his/her business concern by acquisition, merger, sale and or/transfer or by any means convey his/her interest(s) to another party, all obligations are transferred to that new party. In this event, the new owner(s) will be required to submit all documentation/legal instruments that were required in the original bid/contract. Any change shall be approved by the Owner.
- g. The contractor will not assign any interest in the contract and shall not transfer any interest in the same without the prior written consent of the owner.
- h. The owner may terminate the contract for convenience by providing sixty (60) calendar days advanced notice to the contractor.

5. **Mandatory Contract Language**

Inclusion of the following mandatory contract language in **every goods and services contract and construction contract**.

“Sub recipient and/or borrower agrees to use its best efforts to afford small businesses, minority business enterprises, women’s business enterprises (including Section 3 businesses) and veteran –owned businesses the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms “small business” means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and “minority and women’s business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans and American Indians. The Sub recipient and/or borrower may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.”

And:

“The contractor must demonstrate to the NJEDA’s satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the NJEDA’s contract with the contractor. Payment may be withheld from a contractor’s contract for failure to comply with these provisions.

Evidence of a “good faith effort” includes, but is not limited to:

- A. *The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <http://NJ.gov/JobCentralNJ>;*
- B. *The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;*
- C. *The Contractor shall actively solicit and shall provide the NJEDA with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and*
- D. *The Contractor shall provide evidence of efforts described at B. above to the NJEDA no less frequently than once every 12 months.*
- E. *The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.”*

6. Summary of Civil Rights Laws, Executive Orders, and Regulation

CDBG grantees and subrecipients must assure that all project activities will be administered in compliance with civil rights laws and regulations.

SEE COMPLIANCE: CHAPTER IV - LABOR STANDARDS

CHAPTER V - SECTION 3

CHAPTER VI - EQUAL EMPLOYMENT OPPORTUNITY

APPENDIX 4

Contents

Exhibit 4-1: Construction Contracts Sample Forms

EXHIBIT 4-1

CONTRACT
SAMPLE FORMS

This does not represent all of the required content of a professional service or construction contract. It only provides some of the forms as samples.

- [Anti-Lobbying Certification](#)
- [Performance Bond](#)
- [Payment Bond](#)
- [Certificate of Owner's Attorney](#)
- [Drug-Free Workplace Certification \(HUD-50070\)](#)
- [General Contractor and Subcontractor Affirmative Action/EEO/Section 3/Prevailing Wage/SWMBVE's Addendum to Construction Contracts and Bid Documents](#)

ANTI-LOBBYING CERTIFICATION (Sample)

Section 319 of Public Law 101-121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, cooperative agreement, or loan.

The Federal Register (page 52070, dated December 20, 1989) specifically forbids the Department of Housing and Urban Development (HUD) from awarding contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying.

This new requirement has since been narrowed to signed certifications for all awards of Federal funds over \$100,000. This begins with the State's grant and applies to all Subrecipients, contractors, subcontractors, suppliers, etc. for all contracts, grants, cooperative agreements, or loans over \$100,000.

Failure of the Subrecipient to obtain this certification from all awards of \$100,000 or more will result in a program finding and suspended disbursement of Federal funds for the applicable activity or contract.

A copy of this certification can be found on the following page.

CERTIFICATION REGARDING GOVERNMENT-WIDE RESTRICTION ON LOBBYING

(For contracts, grants, cooperative agreements, and loans over \$100,000)

The undersigned certifies, to the best of his knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards (at all tiers, including contracts under grants, loans, and cooperative agreements, subcontracts, and subgrants) over \$100,000, and that all Subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Entity (city, county, contractor, etc.)

Name of Certifying Official (Mayor, Presiding Commissioner, President, etc.)

Signature of Certifying Official

Date

PERFORMANCE BOND (Sample)

KNOW ALL PERSONS BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal, and
(Corporation, Partnership or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER in the total aggregate penal sum of _____

Dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain CONTRACT with the OWNER, dated the _____ day of _____ 20 _____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and agreements of said CONTRACT during the original term thereof, and any extensions thereof which may be granted by the OWNER with or without notice to the SURETY and during the one year guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such CONTRACT, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the CONTRACT or to WORK to be performed thereunder or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the CONTRACT or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the CONTRACT not increasing the CONTRACT price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment", wherever used in this BOND, and whether referring to this BOND, the CONTRACT or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER that no final settlement between the OWNER and the PRINCIPAL shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The OWNER are the only beneficiaries hereunder.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of
(Number)

which shall be deemed an original, this the _____ day of _____.

ATTEST:

(Secretary)

(Principal)

(SEAL)

By _____

(Address)

Surety

ATTEST:

Witness to Surety

BY _____
Attorney-in-Fact

(Address)

(Address)

NOTE: Date of BOND must not be prior to date of CONTRACT.

If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

PAYMENT BOND (Sample)

KNOW ALL PERSONS BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal, and
(Corporation, Partnership or Individual)

(Name of Surety)

hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, and unto all persons, firms and corporations who or which may furnish labor, or who furnish materials to perform as described under the CONTRACT and to their successors and assigns in the total aggregate penal sum of _____

Dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain CONTRACT with the OWNER, dated the _____ day of _____ 20 _____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such CONTRACT, and any authorized extensions or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK and for all labor cost incurred in such WORK including that by a SUBCONTRACTOR, and to any mechanic or materialman lien holder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the CONTRACT or to the WORK to be

performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this CONTRACT or to the WORK or to the SPECIFICATIONS.

PROVIDE, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct CONTRACT with the PRINCIPAL (or with the GOVERNMENT in the event the GOVERNMENT is performing the obligations of the OWNER), shall have given written notice to any two of the following: the PRINCIPAL, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the WORK or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the WORK or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER, or SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date of which PRINCIPAL ceased WORK on said CONTRACT, is being understood, however, that if any limitation embodied in the BOND is prohibited by law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the CONTRACT not increasing the CONTRACT price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the CONTRACT or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER or GOVERNMENT and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of
(Number)
which shall be deemed an original, this the _____ day of _____.

ATTEST:

Principal

(Principal) Secretary

(SEAL)

By _____

(Witness as to Principal) _____
(Address)

(Address) _____

Surety

ATTEST:

Witness to Surety _____
Attorney-in-Fact

(Address) _____
(Address)

NOTE: Date of BOND must not be prior to date of CONTRACT

If CONTRACTOR is partnership, all partners should execute BOND. IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

CERTIFICATE OF OWNER'S ATTORNEY (Sample)

I, the undersigned, _____, the duly authorized and acting legal representative of _____, do hereby certify as follows:

I have examined the attached contract(s) and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

(Signature)

(Date)

CERTIFICATION FOR A DRUG-FREE WORKPLACE

Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

Applicant Name _____

Program/Activity Receiving Federal Grant Funding _____

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

- (1) The dangers of drug abuse in the workplace;
- (2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official	Title
Signature	Date
X	

form HUD-50070 (3/98)
ref. Handbooks 7417.1, 7475.13, 7485.1 & .3

**GENERAL CONTRACTOR AND SUBCONTRACTOR
AFFIRMATIVE ACTION/EEO/SECTION 3/PREVAILING WAGE/SWMBVE's ADDENDUM
TO CONSTRUCTION CONTRACTS AND BID DOCUMENTS**

NJEDA OFFICE OF RECOVERY - DISASTER RECOVERY CDBG - SANDY
THIS PROJECT IS SUBJECT TO FEDERAL AND STATE PREVAILING WAGE AND EEO REQUIREMENTS

Sandy EEO Bid Form -3

**GENERAL CONTRACTOR AND SUBCONTRACTOR
AFFIRMATIVE ACTION / EEO / SECTION 3 / PREVAILING WAGE/SWMBVEs ADDENDUM
TO CONSTRUCTION CONTRACTS AND BID DOCUMENTS**

NJEDA PROJECT #: _____
PROJECT NAME: _____
DATE OF ACTUAL OR PROJECTED CONTRACT AWARD TO PRIME CONTRACTOR: _____

Authority's "Affirmative Action-EEO/Section 3/Prevailing Wage / SWMBVEs Addendum to Construction Contract and Bid Documents" will be included as part of all bid documents and construction contracts and be signed **by each** of the following in the signature boxes below:

- 1.) coordinating subcontractors
- 2.) Any Subcontractor (All Tiers) performing construction trade labor

1. GENERAL CONTRACTOR, PRIME OR CONSTRUCTION MGR.	1a.) Company Name of General Contractor, Prime Contractor, or Construction Mgr. coordinating all subcontractors	_____
	1b.) Mailing Address of General Contractor, Prime Contractor, or Construction Mgr. (Street Address / P.O./ City / State/ Zip)	_____
	1c.) Phone:	_____
	1d.) Name and Title of Authorized Signatory of the General Contractor, Prime Contractor or Construction Mgr. above in 1a.	_____
	1e.) Signature of Authorized Person (Please sign in blue Ink above)	_____
	1f.) Date of Signature	_____
	1g.) Phone:	_____
	1h.) Name of Person in Payroll, Accounting, etc. responsible for preparing monthly reports	_____

2. SUBCONTRACTOR	2a.) Company Name of Subcontractor (all tiers)	_____
	2b.) Mailing Address of Subcontractor (Street Address / P.O./ City / State/ Zip)	_____
	2c.) Phone:	_____
	2d.) Name and Title of Authorized Signatory of the Subcontractor above in 2a.	_____
	2e.) Signature of Authorized Person (Please sign in blue Ink above)	_____
	2f.) Date of Signature	_____
	2g.) Phone:	_____
	2h.) Name of Person in Payroll, Accounting, etc. responsible for preparing monthly reports	_____



**THIS DOCUMENT MUST BE SIGNED BY
THE GENERAL CONTRACTOR AND EACH
SUBCONTRACTOR AS PART OF COMPLIANCE**

SUBMIT TO: LYOUNG@NJEDA.com or: NJEDA - PO Box 990 - Trenton, NJ 08625-0990

APPENDIX 5

Contents

Exhibit 5-1: [State of New Jersey Standard Terms and Conditions](#)

Exhibit 5-2: [CDBG Compliance Provisions for Construction Contracts](#)

Exhibit 5-3: [CDBG General Conditions](#)

Exhibit 5-4: [Voluntary Compliance Agreement and Conciliation Agreement](#)

Exhibit 5-5: [CDBG Compliance Provisions for Professional Services Contracts](#) (REVISED 6/10/15)

EXHIBIT 5-1

State of New Jersey

Standard Terms and Conditions

- 1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT**- Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.
- 2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS** - The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

 - 2.1 BUSINESS REGISTRATION** – Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the “Sales and Use Tax Act, P.L. 1966, c. 30 (<http://www.state.nj.us/treasury/revenue/busregcert.shtml> N.J.S.A.54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/njbgs/bgsclientreg.shtml>
 - 2.2 ANTI-DISCRIMINATION** - All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.
 - 2.3 PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on [this proposal] is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to

perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

2.4 AMERICANS WITH DISABILITIES ACT - The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.5 MACBRIDE PRINCIPLES – The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom’s Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.6 PAY TO PLAY PROHIBITIONS – Pursuant to N.J.S.A. 19:44A-20.13 et seq (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:

- a. make or solicit a contribution in violation of the statute;
- b. knowingly conceal or misrepresent a contribution given or received;
- c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
- e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
- h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

2.7 POLITICAL CONTRIBUTION DISCLOSURE – The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one or more contracts valued at \$50,000.00 or more. It is the contractor’s responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <http://www.elec.state.nj.us/> .

2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST - The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or

- corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
 - c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
 - d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
 - e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
 - f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE - Pursuant to L 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.10 COMPLIANCE - LAWS - The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.11 COMPLIANCE - STATE LAWS - It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.

3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 COMPLIANCE - CODES – The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS - N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- b. The contractor or subcontractor, where applicable 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 age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- c. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows;

- a. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

- b. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- c. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- d. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.4 BUILDING SERVICE – Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT - The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

3.6 SERVICE PERFORMANCE WITHIN U.S. – Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b)(1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.7 BUY AMERICAN – Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

4. INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION - The contractor's liability to the State and its employees in third party suits shall be as follows:

- a. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries,

judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

- b. The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions.
- c. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 INSURANCE - The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, and the certificates shall reflect that the insurance policies shall not be canceled for any reason except after sixty (60) days written notice to the State. Certificates of renewals shall be provided within thirty (30) days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, PO Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at: ccau.certificate@treas.state.nj.us

The insurance to be provided by the contractor shall be as follows:

- a. Occurrence Form Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- b. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

\$1,000,000 BODILY INJURY, EACH OCCURRENCE
\$1,000,000 DISEASE EACH EMPLOYEE
\$1,000,000 DISEASE AGGREGATE LIMIT

- d. This \$1 million amount may have been raised by the RFP when deemed necessary by the Director.
- e. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17, et.seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

5. TERMS GOVERNING ALL CONTRACTS

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR – The contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2 CONTRACT AMOUNT - The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.

5.3 CONTRACT TERM AND EXTENSION OPTION - If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least thirty (30) days prior to the expiration date of the existing contract. The contractor shall have fifteen (15) calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions including pricing of the original contract shall apply unless more favorable terms for the State have been negotiated.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK – The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- a. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price.
- b. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.5 CHANGE IN LAW– Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the contractor of the change and the Director's determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- a. If the contractor does not agree with the adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price.
- b. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.6 SUSPENSION OF WORK - The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

- a. For Convenience
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than thirty (30) days written notice to the contractor.
- b. For Cause
 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17: 12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days notice to the contractor with an opportunity to respond.
 2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days notice to the contractor with an opportunity to respond.
- c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- d. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING OR ASSIGNMENT –

- a. Subcontracting : The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his responsibilities under the contract, nor shall it

create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.

- b. Assignment: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE - Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

5.10 MERGERS, ACQUISITIONS - If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within thirty (30) days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR - The contractor hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable.
- c. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location.
- d. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
- f. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.
- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS-

- a. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract.
- b. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice.
- c. Items delivered must be strictly in accordance with the contract.
- d. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION - This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

5.14. CONTRACT AMENDMENT – Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

5.15 MAINTENANCE OF RECORDS - The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless otherwise specified in the RFP. Such records shall be made available to the State, including the Comptroller, for audit and review.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S) - The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

- a. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It shall advise the Attorney General of New Jersey:
 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- c. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
- d. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

6. TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT - Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

6.2 TAX CHARGES - The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS -

a. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price.

b. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the State Contract Manager or using agency on the date of each delivery. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized.

c. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls.

d. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

6.4 OPTIONAL PAYMENT METHOD: P-CARD - The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To

participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT - The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS – The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenues.

EXHIBIT 5-2

**CDBG COMPLIANCE PROVISIONS
for
CONSTRUCTION CONTRACTS**

(These provisions must be included in all construction contracts)

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1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)

(applicable to contracts and subcontracts above \$10,000)

During the performance of this contract, the Contractor agrees as follows:

- A. 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; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. 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 without regard to race, color, religion, sex, or national origin.
- C. 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 Contract Compliance Officer 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.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by 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 others.
- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, 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 a 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 interest of the United States.

2. **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS**

(applicable to contracts and subcontracts above \$10,000)

A. As used in these specifications:

- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- (4) "Minority" includes:
 - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race);
 - (c) Asian and Pacific Islander (all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

B. When the Contractor, or any subcontractor, at anytime, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract, in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

C. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under

the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

- D. The Contractor shall implement the specific affirmative action standards provided in paragraphs G(1) through G(16) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

- (3) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- (4) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly includes minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under G(2) above.
- (6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on a bulletin board accessible to all employees at each location where construction work is performed.
- (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- (9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for acceptance of applications for apprenticeship or other

training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitation to minority and female contractor associations and other business associations.
 - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G(1) through G(16)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under G(1) through G(16) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.
- I. A single goal for minorities and a separate single goal for women has been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both

- minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- J. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any persons because of race, color, religion, sex, or national origin.
 - K. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to E.O. 11246.
 - L. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to E.O. 11246, as amended.
 - M. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
 - N. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number where assigned, social security number, race, sex, status (e.g., mechanic, apprenticeship trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
 - O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

3. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION

(applicable to contracts and subcontract over \$10,000)

- A. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation: (see table below per N.J.A.C 17:27-7.2)

Goals for female participation: 6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed.

With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

MINORITY PARTICIPATION GOALS

COUNTY	MIN. GOAL (%)	COUNTY	MIN. GOAL (%)
Atlantic	18	Middlesex	24
Bergen	22	Monmouth	15
Burlington	15	Morris	16
Camden	19	Ocean	7
Cape May	5	Passaic	36
Cumberland	27	Salem	10
Essex	53	Somerset	20
Gloucester	9	Sussex	4
Hudson	60	Union	45
Hunterdon	3	Warren	5
Mercer	30		

- C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the sub-contract; and the geographical area in which the contract is to be performed.

- D. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is *(insert description of the geographical areas where the contract is to be performed, giving the State, county, and city, if any):*

4. **CERTIFICATION OF NONSEGREGATED FACILITIES**

(applicable to contracts and subcontracts over \$10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

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

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

5. **CIVIL RIGHTS**

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

6. **SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

The Contractor shall comply with the provisions of 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. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

7. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES**

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3).

The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract 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.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

8. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)
(applicable to contracts and subcontracts over \$10,000)

- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, 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 Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

9. 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.

10. AGE DISCRIMINATION ACT OF 1975

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

11. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(applicable to contracts and subcontracts exceeding \$100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor or subcontractors, 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 Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c-8) 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 Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the 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, is under consideration to be listed on the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section 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.

12. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION

- A. Lead-Based Paint Hazards
(include in contracts for construction or rehabilitation of residential structures)

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and subcontractors shall comply with the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14 (f) thereof.

- B. Use of Explosives (Modify as required)

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or

property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

C. Danger Signals and Safety Devices (Modify as Required)

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

13. FLOOD DISASTER PROTECTION

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

14. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

The State of New Jersey, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the State's final closeout of the grant.

15. INSPECTION

The authorized representative and agents of the State of New Jersey and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

16. REPORTING REQUIREMENTS

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

17. CONFLICT OF INTEREST

A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

18. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED

(applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this contract, the Contractor agrees as follows:

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure 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.

B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer 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.

C. Contractors shall incorporate foregoing requirements in all subcontracts.

19. PATENTS

A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance

manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

20. COPYRIGHT

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

21. TERMINATION FOR CAUSE

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

22. TERMINATION FOR CONVENIENCE

The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Contractor. If the contract is terminated by the Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

23. ENERGY EFFICIENCY

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

24. SUBCONTRACTS

- A. The Contractor shall not enter into any subcontract with any subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contacting programs by any agency of the United States Government or the State of New Jersey.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.
- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

25. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

26. PROTECTION OF LIVES AND HEALTH

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Owner may determine to be reasonably necessary.

27. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder

shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

29. CHANGES

The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

30. PERSONNEL

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.

All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

31. ANTI-KICKBACK RULES

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

32. ASSIGNABILITY

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Owner provided that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee

in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

33. INTEREST OF CONTRACTOR

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

34. POLITICAL ACTIVITY

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

35. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this contract.

36. DISCRIMINATION DUE TO BELIEFS

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

37. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

38. LOBBYING

The Contractor certifies, to the best of his or her knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with 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.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the

contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

39. FEDERAL LABOR STANDARDS PROVISIONS

The Contractor shall abide by the requirements of the Federal Labor Standards Provisions (HUD-4010).

EXHIBIT 5-3

This list of recommended contract clauses are not required items but are generally accepted for use as “good practice”. They are herewith provided for your use and benefit.

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM GENERAL CONDITIONS

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|--|--|
| 1. Definitions | 24. Lands and Right-of-Way |
| 2. Additional Instructions and Detail Drawings | 25. Guarantee |
| 3. Schedules, Reports and Records | 26. Remedies |
| 4. Drawings and Specifications | 27. Taxes |
| 5. Shop Drawings | 28. Provisions Required by Law Deemed Inserted |
| 6. Materials, Services, and Facilities | 29. Protection of Lives and Health |
| 7. Inspection and Testing of Materials | 30. Interest of Member of Congress |
| 8. Substitutions | 31. Other Prohibited Interests |
| 9. Patents | 32. Suspension of Work |
| 10. Surveys, Permits, and Regulations | |
| 11. Protection of Work, Property, Persons | |
| 12. Supervision by Contractor | |
| 13. Changes in Work | |
| 14. Changes in Contract Price | |
| 15. Time for Completion and Liquidated Damages | |
| 16. Correction of Work | |
| 17. Subsurface Conditions | |
| 18. Suspension of Work, Termination and Delay | |
| 19. Payments to Contractor | |
| 20. Acceptance of Final Payments as Release | |
| 21. Assignments | |
| 22. Separate Contracts | |
| 23. Architect/Engineer's Authority | |

1. DEFINITIONS

The following terms as used in this contract are respectively defined as follows:

- a. "Contractor": A person, firm, or corporation with whom the contract is made by the Owner.
- b. "Subcontractor": A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with the contractor.
- c. "Work on (at) the project": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any Subcontractor.
- d. "Written Notice": Any work to any party of the Agreement relative to any part of this in writing and considered delivered and the service thereof completed, when posted by certified or

registered mail to the said party at their last given address, or delivered in person to said party or their authorized representative on the work.

2. **ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**

The Contractor may be furnished additional instructions and detail drawings, by the A/E, as necessary to carry out the work required by the contract documents.

The additional drawings and instructions thus supplied will become a part of the contract drawings. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

3. **SCHEDULE, REPORTS AND RECORDS**

The Contractor shall submit to the owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the contract documents for the work to be performed.

Prior to the first partial payment estimate the Contractor shall submit construction progress schedules showing the order in which the Contractor proposes to carry on the work, including dates at which the various parts of the work will be started, estimated date of completion of each part and as applicable.

The dates at which special drawings will be required and respective dates for submission of shop drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

The Contractor shall also submit a schedule of payments that the Contractor anticipates will be earned during the course of the work.

4. **DRAWINGS AND SPECIFICATIONS**

The intent of the drawings and specifications is that the Contractor shall furnish all labor, materials, tools, equipment and transportation necessary for the proper execution of the work in accordance with the contract documents and all incidental work necessary to complete the project in an acceptable manner, ready for use, occupancy or operation by the owner.

In case of conflict between the drawings and specification, the specification shall govern. Figure dimensions on drawings shall govern over general drawings.

Any discrepancies found between the drawings and specifications and site conditions or any inconsistencies or ambiguities in the drawings or specifications shall be immediately reported to the A/E in writing, who shall promptly correct such inconsistencies or ambiguities in writing.

Work done by the Contractor after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the Contractor's risk.

5. **SHOP DRAWINGS**

The Contractor shall provide shop drawings as may be necessary for the prosecution of the work as required by the contract documents. The A/E shall promptly review all shop drawings. The A/E's approval of any shop drawing shall not release the Contractor from responsibility for deviations from the contract documents. The approval of any shop drawing which substantially deviates from the requirement of the contract documents shall be evidenced by a change order.

When submitted for the A/E's review, shop drawings shall bear the Contractor's certification that he has reviewed, checked and approved the shop drawings and that they are in conformance with the requirements of the contract documents.

Portions of the work requiring a shop drawing or sample submission shall not begin until the shop drawing or submission has been approved by the A/E. A copy of each approved shop drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the A/E.

6. MATERIALS, SERVICES AND FACILITIES

It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection.

Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

Material, supplies and equipment shall be in accordance with samples submitted by the Contractor and approved by the A/E.

Materials, supplies or equipment to be incorporated into the work shall not be purchased by the Contractor or by any Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller when a Payment Bond is not required the contract documents.

7. INSPECTION AND TESTING OF MATERIALS

All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the contract documents

The Owner shall provide all inspection and testing services not required by the contract documents.

The Contractor shall provide at the Contractor's expense the testing and inspection services required by the contract documents.

If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any work to specifically be inspected, tested or approved by someone other than the Contractors, the Contractor will give the A/E timely notice of readiness. The Contractor will then furnish the A/E the required certificates of inspection, testing approval.

Inspections, tests or approvals by the A/E or others shall not relieve the Contractor from the obligations to perform the work in accordance with the requirements of the contract documents.

The A/E and the A/E's representatives will at all times have access to the work. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records or personnel, invoices of materials

and other relevant data and records. The Contractor will provide proper facilities for such access and observation of the work and also for any inspection or testing thereof.

If any work is covered contrary to the written instruction of the A/E it must, if requested by the A/E, be uncovered for the A/E's observation and replaced at the Contractor's expense.

If the A/E considers it necessary or advisable that covered work be inspected or tested by others, the Contractor, at the A/E's request, will uncover, expose or otherwise make available for observation, inspection or testing as the A/E may require, that portion of the work in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such work is defective, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, if, however, such work is not found defective, the contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate change order shall be issued.

Authorized representatives and agents of the Department of Housing and Urban Development (HUD) and/or the New Jersey Economic Development Authority (NJEDA) shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

8. SUBSTITUTIONS

Whenever a material, article, or piece of equipment is identified on the drawings and specifications by referenced to brand name or catalog numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The Contractor may recommend the substitution of material, article or piece of equipment of equal substance and function for those referred to in the contract documents by referenced to brand name or catalog number, if, in the opinion of the A/E, such material, article or piece of equipment is of equal substance function to that specified, the A/E may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the contract price and the contract documents shall be appropriately modified by change order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the contract price or contract time.

9. PATENTS

The Contractor shall pay all applicable royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and save the owner harmless from loss on account thereof, except that the Owner shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified, however, if the Contractor has reason to believe that design, process or product specified is an infringement of a patent, the Contractor shall be responsible for such loss unless the Contractor promptly gives such information to the A/E.

10. SURVEYS, PERMITS, AND REGULATIONS

The Owner shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the work together with a suitable number of bench marks adjacent to the work as shown in the contract documents. From the information provided by the Owner, unless otherwise specified in the contract documents, the Contractor shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pipe locations and other working points, lines, elevations and cut sheets.

The Contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.

Permits and licenses of temporary nature necessary for the prosecution of the work shall be secured and paid for by the contractors unless otherwise stated in the supplemental general conditions. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the owner, unless otherwise specified. The

Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance therewith, the Contractor shall promptly notify the A/E in writing, and any necessary changes shall be adjusted as provided in Section 13 changes in the work.

11. PROTECTION OF WORK, PROPERTY, PERSONS

The Contractor will be responsible for initiating, maintain and supervising all safety precautions and programs in connection with the work. The Contractor will take all necessary precautions for the safety or, and will provide the necessary protection to prevent damage, injury or loss to all employees on the work and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walk pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall comply with all pertinent provisions of the Occupational Safety and Health Administration (OSHA) and any State Safety and Health agency requirements.

The Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Contractor will erect and maintain, as required by the conditions and progress of the work, all necessary safeguards for safety and protections. The Contractor will notify owners of adjacent utilities when prosecution of the work may affect them. The Contractor will remedy all damage, injury or loss to any property caused directly or indirectly, in whole or part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone whose acts any of them be liable, except damage or loss attributable to the fault of the contract documents or to the acts or omissions of the owner, of the A/E or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor.

In emergencies affecting the safety of persons or the work or property at the site or adjacent thereto, the Contractor, without special instructions or authorization from the A/E or owner, shall act to prevent threatened damage, injury or loss. The Contractor will give the A/E prompt written notice of any significant changes in the work or deviations from the contract documents caused thereby and a change order shall thereupon be issued covering the changes and deviations involved.

12. SUPERVISION BY CONTRACTOR

The Contractor will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the Contractor or the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be a binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

13. CHANGES IN WORK

The Owner may at any time, as need arises, order changes within the scope of the work without invalidating the agreement. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order. Change order shall be used to adjust quantities of installed units which are different than those shown in the bid schedule because of final measurements. Final measurements shall not be considered changes in the work. Final measurements will determine compensation to the Contractor based on unit price shown in bid schedule.

The A/E, also, may at any time, by issuing a field order, make changes in the details of the work. The Contractor shall proceed with the performance of any changes in the work so ordered by the A/E unless the Contractor believes that such field order entitles the Contractor to a change in contract price or time or both, in which event the Contractor shall give the A/E written notice thereof within seven (7) days after the receipt of the ordered change. Thereafter the Contractor shall document the basis for the change in contract price or time within thirty (30) days. The Contractor shall not execute such changes pending the receipt of an executed change order or further instruction from the owner.

14. CHANGES IN CONTRACT PRICE

The contract price may be changed only by a change order. The value of any work covered by a change order or any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below.

a. Unit prices previously approved

b. An agreed lump sum

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

The date of beginning and the time for completion of the work are essential conditions of the contract documents and the work embraced shall be commenced on a date specified in the "Notice to Proceed"

The Contractor will proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed, by and between the Contractor and the Owner, that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

If the Contractor shall fail to complete the work within the contract time or extension of time granted by the Owner, then the Contractor will pay to the Owner the amount for liquidated damages as specified in the bid each calendar day that the Contractor shall be in default after the time stipulated in the contract documents.

The Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following and the contractor has promptly given written notice of such delay to the Owner or A/E.

To any preference, priority or allocation order duly issued by the Owner.

To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the owner, fires, floods, epidemics, quarantine

restrictions, strikes, freight embargoes and abnormal and unforeseeable weather; and to any delays of Subcontractors occasioned by any of the causes specified in this article.

16. CORRECTION OF WORK

The Contractor shall promptly remove from the premises all work rejected by the A/E for failure to comply with the contract documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and reexecute the work in accordance with the contract documents and without expense to the owner and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.

All removal and replacement work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected work within ten (10) days after receipt of written notice, the Owner may remove such work and store the materials at the expense of the Contractor.

17. SUBSURFACE CONDITIONS

The Contractor, before bidding the project, has the responsibility to become familiar with the site of the project and the conditions under which work will have to be performed during the construction period.

Excavating for foundations of surface structure: buildings, bridges, tanks, towers, retaining walls and other types of surface structures.

The Contractor shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the owner by written notice of subsurface or latent physical conditions at the site differing materially from those indicated in the contract documents.

Or unknown physical conditions at the site of unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for the contract documents.

The Owner shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the work, an equitable adjustment shall be made and the contract documents shall be modified by a change order. Any claim of the Contractor for adjustment hereinafter shall not be allowed unless the required written notice has been given; provided that the Owner may, if the Owner determines the facts so justify consider and adjust any such claims asserted before the date of the final payment.

Excavating for below-surface structures: water mains, sewers, power and telephone cables and other types of below surface structures.

No extra compensation will be paid for rock excavation or varying geologic features encountered on the project, unless so shown as a bid item in the Bid Schedule for bid.

If man-made hazards are encountered by the Contractor, excluding utilities, which are not visible from the surface, such as buried concrete foundations, buried garbage dumps that cannot be by-passed and requires additional work, then the procedure set forth in (e) will be followed.

18. SUSPENSION OF WORK, TERMINATION AND DELAY

The Owner may suspend the work or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the Contractor, by written notice to the Contractor and the A/E which shall fix the date on which work shall be resumed. The Contractor will resume that work on the

date do fixed. The Contractor will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to any suspension.

If the Contractor is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of its property, or if Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or repeatedly fails to make promptly payments to Subcontractors or for labor, materials or equipment or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the work or disregards the authority of the A/E, or otherwise violates any provision of the contract documents, then the owner may, without prejudice to any other right or remedy and after giving the Contractor and its surety a minimum of ten (10) days from delivery of a written notice, terminate the services of the Contractor and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and finish the work by whatever method the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor will pay the difference to the owner. Such costs incurred by the Owner will be determined by the A/E and incorporated in a change order.

Where the Contractor's services have been so terminated by the owner, said termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the owner due the Contractor will not release the Contractor from compliance with the contract documents.

After ten (10) days from delivery of written notice the Contractor and the A/E, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the contract. In such case the Contractor shall be paid for all work executed and any expense sustained plus reasonable profit.

If, through no act or fault of the Contractor, the work is suspended for a period of more than ninety (90) days by the Owner or under an order of court or other public authority, or the A/E fails to act on any request for payment within thirty (30) days after its is submitted, or the Owner fails to pay the Contractor substantially the sum approved by the A/E or awarded by arbitrators within thirty (30) days of its approval and presentation, then the Contractor may, after ten (10) days from delivery of written notice to the Owner and the A/E terminate the contract and recover from the Owner payment for all work executed and all expenses sustained. In addition and in lieu of terminating the contract, if the A/E has failed to act on a request for payment or if the owner has failed to make any payment as aforesaid, the Contractor may upon ten (10) days written notice to the owner and the A/E stop the work until paid all amount then due, in which event and upon resumption of the work, change orders shall be issued for adjusting the contract price or extending the contract time or both to compensate for the costs and delays attributable to the stoppage of the work.

If the performance of all or any portion of the work is suspended, delayed, or interrupted as a result of a failure of the owner or A/E to act within the time specified in the contract documents, or if no time is specified, within a reasonable time, an adjustment in the contract price or an extension of the contract time, or both, shall be made in change order to compensate the Contractor for the costs and delays necessarily caused by the failure of the owner or A/E.

The Owner, without terminating the service of the Contractor or written notice to the Surety, through the A/E may withhold – without prejudice to the rights of the Owner under the terms of the agreement – or on account of subsequently discovered evidence, nullify the whole or part of any approved partial payment estimate to such extent as may be necessary to protect the owner from loss on account of: defective work not remedied, claims filed or reasonable evidence indicating probable filing of claims, failure of Contractor to make payments properly to Subcontractors or for material or labor, a reasonable doubt that the work can be completed for the balance then unpaid damages to another Contractor and performance of work in violation of the terms of the contract documents.

19. PAYMENTS TO CONTRACTOR

At least ten (10) days before each progress payment falls due (but not more often than once a month), the Contractor will submit to the A/E a partial payment estimate filled out and signed by the Contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the A/E may reasonable require. The A/E will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing approval of payment, and present the partial payment estimate to the Owner, or return the partial payment estimate to the Contractor indicating in writing the reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. The Owner will, within ten (10) days of presentation of an approved partial payment estimate pay the Contractor a progress payment on the basis of the approved partial payment estimate less the retainage. The retainage shall be an amount equal to 10% of said estimate until completion and acceptance of the work. The 10% retainage may be reduced by change order if completion and acceptance of the work is delayed due to valid circumstances and the work is usable for its intended purpose by the owner. If reduction in the retainage is approved the remaining retainage shall be an amount sufficient to complete the work.

The request for payment may also include an allowance for the cost of major materials and equipment which are suitable stored either at or near the site. Payment does not relieve the Contractor of his responsibility for the safe keeping of this material and equipment.

Prior to completion and acceptance of the work, the owner, with approval of the A/E and with the concurrence of the Contractor, may use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work.

The Owner shall have the right to enter the premises for the purpose of doing work not covered by the contract documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the work, or the restoration of any damaged work except such as may be caused by agents or employees of the owner.

Upon completion and acceptance of the work, the A/E shall issue a certificate attached to the final payment request that the work has been accepted under the conditions of the contract documents. The entire balance found to be due to the Contractors, including the retained percentages, but except such sums as may be lawfully retained by the Owner, shall be paid to the Contractor within thirty (30) days of completion and acceptance of the work. The A/E's certificate of acceptance will be on the document "Consultant's Certification for Acceptance and Final Payment".

The Contractor will indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demand of Subcontractors, laborers, workmen, mechanics, material, men and furnishers of machinery and parts thereof, equipment, tools and all supplies incurred in the furtherance of the performance of the work. The Contractor shall, at the Owner's request furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged,

or waived. If the Contractor fails to do so the Owner may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonable sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed in accordance with the terms of the contract documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor, the Contractor's Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a payment made under the contract documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

If the Owner fails to make payment thirty (30) days after approval by the A/E, in addition to other remedies available to the Contractor, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the Contractor.

20. ACCEPTANCE OF FINAL PAYMENTS AS RELEASE

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work. Any payment, however final or otherwise, shall not release the Contractor or its sureties from any obligations under the contract documents or the Performance and Payment Bonds.

21. ASSIGNMENTS

Neither the Contractor nor the Owner shall sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or of any right, title or interest therein, or any obligations thereunder, without written consent of the other party.

22. SEPARATE CONTRACT

The Owner reserves the right to let other contracts in connection with this project. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate the work with theirs. If the proper execution or results of any part of the Contractor's work depends upon the work of any other Contractor, the Contractor shall inspect and promptly report to the A/E any defects in such work that render it unsuitable for such proper execution and results.

The Owner may perform additional work related to the project or the Owner may let other contracts containing provisions similar to these. The Contractor will afford the other Contractors who are parties to such contracts (or the Owner, if the Owner is performing the additional work) reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate the work with theirs.

If the performance of additional work by other Contractors or the Owner is not noted in the contract documents prior to the execution of the contract, written notice thereof shall be given to the Contractor prior to starting any such addition work. If the Contractor believes that the performance of such additional work by the Owner or others involves it in additional expense or entitles it to any extension of the contract time the Contractor may make a claim thereof as provided in Section 14 and 15.

23. ARCHITECT/ENGINEER'S AUTHORITY

The A/E shall act as the Owner's representative during the construction period, shall decide questions which may arise as the quality and acceptability of materials furnished and work performed, and shall interpret the intent of the contract documents in a fair and unbiased manner. The A/E will make visits to the site and determine if the work is proceeding in accordance with the contract documents.

The Contractor will be held strictly to the intent of the contract documents in regard to the quality of materials, workmanship, and execution of the work. Inspections may be at the factory or fabrication plant of the source of the material supply.

The A/E will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.

The A/E shall promptly make decisions relative to interpretation of the contract documents. The A/E shall be responsible for obtaining an acknowledgement of the "Consultant's Certification for Acceptance and Final Payment" from the Owner before the certifications may take effect.

24. LANDS AND RIGHT-OF-WAY

Prior to issuance of Notice to Proceed, the Owner shall obtain all lands and rights-of-way necessary for the carrying out and completion of work to be performed pursuant to the contract documents, unless otherwise mutually agreed.

The Owner shall provide to the Contractor information which delineates and describes the lands owned and right-of-way acquired.

The Contractor shall provide at its own expense and without liability to the Owner any additional land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials.

25. GUARANTEE

The Contractor shall guarantee all materials and equipment furnished and work performed for a period of one (1) year from the date of completion and acceptance of the work. The Contractor warrants and guarantees for one (1) year from the date of completion and acceptance of the work that the completed work is free from all defects due to faculty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any other damages that were caused by defects in the work. The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. In emergency where, in the judgment of the Owner, delay would cause serious loss or damage, repairs and replacement of defects in the work and damage caused by defects may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof. The Performance Bond shall remain in full force and effect through the guarantee period.

26. REMEDIES

Except as may be otherwise found in the contract documents, all claims, disputes, counter-claims, and other matters in question between the Owner and Contractor arising out of or related to this agreement or the breach thereof, will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the state in which the Owner is located.

27. TAXES

The Contractor will pay all sales, consumer, use and other similar taxes required by the laws of the place where the work is performed.

28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

29. PROTECTION OF LIVES AND HEALTH

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971. Title 29 - LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Contracting Authority may determine to be reasonably necessary. OSHA requirements must be followed.

30. INTEREST OF MEMBER OF OR DELEGATE TO CONGRESS

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

31. OTHER PROHIBITED INTERESTS

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory, or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

32. SUSPENSION OF WORK

Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason or any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay with such determination to be set forth in writing.

EXHIBIT 5-4
Voluntary Compliance Agreement

**VOLUNTARY COMPLIANCE AGREEMENT
AND CONCILIATION AGREEMENT**

BETWEEN

**THE UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**



AND

**LATINO ACTION NETWORK,
NEW JERSEY STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
AND
FAIR SHARE HOUSING CENTER
("COMPLAINANTS")**

AND

**THE STATE OF NEW JERSEY;
AND
THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS
("RESPONDENTS")**

CASE NUMBERS:

**Title VI No.: 02-13-0048-6
TITLE VIII No. 02-13-0303-8**

CASE FILED: APRIL 3, 2013

VOLUNTARY COMPLIANCE AGREEMENT AND CONCILIATION AGREEMENT

I. PARTIES

Complainants

Latino Action Network
c/o Frank Argote-Freyre, President
P.O. Box 943
Freehold, NJ 07728

NJ State Conference of the NAACP
c/o Richard Smith, President
4326 Harbor Beach Boulevard, # 775
Brigantine, New Jersey 08203

Fair Share Housing Center, Inc.
c/o Peter J. O'Connor, Executive Director
510 Park Blvd.
Cherry Hill, NJ 08002

Representatives:
Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Blvd.
Cherry Hill, NJ 08002

Michael Allen, Esq.
Relman Dane and Colfax, PLLC
1225 19th St NW # 600
Washington, DC 20036

Respondent

State of New Jersey, Department of Community Affairs
c/o Richard Constable, Commissioner
101 S. Broad Street
PO Box 800
Trenton, NJ 08625-0800

Representative: Sanjay P. Ibrahim, Esq.
Parker Ibrahim & Berg

Subject Property

All property assisted by the award of Community Development Block Grant - Disaster Recovery funding under the Disaster Relief Appropriations Act of 2013 (Public Law 113-2) to fund recovery activities related to Superstorm Sandy.

II. INTRODUCTION

On April 3, 2013, Complainants Latino Action Network (“LAN”), and Fair Share Housing Center (“FSHC”) filed a complaint with the U.S. Department of Housing and Urban Development (the “Department” or “HUD”), Office of Fair Housing and Equal Opportunity (“FHEO”), alleging that the State of New Jersey (“State”) engaged in discriminatory housing practices with respect to the provision of services under Title VI of the Civil Rights Act of 1964 (“Title VI”), Title VIII of the Civil Rights Act of 1968, as amended (the federal Fair Housing Act) (the “Act”); Section 109 of Title I of the Housing and Community Development Act of 1974 (“Section 109”) and failed to affirmatively further fair housing.

On April 23, 2013, the complaint was amended to add the New Jersey State Conference of the National Association for the Advancement of Colored People (“NAACP”) as a Complainant and the New Jersey Department of Community Affairs (“DCA”) as a Respondent. The State and DCA are collectively referred to as ‘Respondents’ or “Recipients.” Collectively, the Complainants and Respondents are referred to herein as the “Parties.”

The Recipients agree to enter into this Agreement in order to ensure compliance with their responsibilities under Title VI, Section 109 and the Act, and to affirmatively further fair housing.

The Parties understand that the Respondents deny any violation of law, and that this Agreement does not constitute an admission by the Respondents or evidence of a determination by the Department of any violation of Title VI, Section 109, the Act, or the obligation to affirmatively further fair housing.

The Parties agree that nothing contained in this Agreement shall be construed to be a finding or determination by the Department that the Recipients or any of their agents or employees intentionally engaged in unlawful practices. The Parties agree that nothing contained in this document shall be construed as an admission of liability by the Respondents or any of their agents or employees with respect to the Complainants’ allegations.

The Department and the Respondents, having agreed to settle and resolve voluntarily all disputed issues hereby agree and consent to the terms of this Agreement.

III. DEFINITIONS

Action Plan: The DCA Community Development Block Grant Disaster Recovery Action Plan approved by HUD on April 29, 2013, and any subsequent amendment thereto.

Agreement: This Conciliation Agreement.

Complainants: Collectively, Latino Action Network, Fair Share Housing Center and the New Jersey Conference of the NAACP.

Complaint: The housing discrimination complaint filed by Complainants LAN and FSHC on April 3, 2013 and joined by NAACP on April 15, 2013.

DCA: The New Jersey Department of Community Affairs

DCA's Sandy Website: The URL located at <http://www.state.nj.us/dca/divisions/sandyrecovery/>, as well as the links provided from that webpage and any subsequent URL providing public information about Sandy Recovery programs..

Department or HUD: The United States Department of Housing and Urban Development

Federal Financial Assistance: This includes (1) grants, loans, and advances of federal funds, (2) the grant or donation of federal property and interests in property, (3) the detail of federal personnel, (4) the sale and lease of, and the permission to use federal property or any interest in such property without consideration or at nominal consideration, or at a consideration which is reduced for the purpose of assisting the Recipient, or in recognition of the public interest to be served by such sale or lease to the Recipient, and (5) any federal agreement, arrangement, or other contract which has one of its purposes the provision of assistance. The term "Federal financial assistance" does not include a contract of insurance or guaranty. 24 C.F.R. § 1.2(e).

FHEO: HUD's Office of Fair Housing and Equal Opportunity

Housing Recovery Centers or HRCs: The Housing Recovery Centers operated by DCA to provide information and assistance for applicants regarding CDBG-DR funded programs.

HMFA: The New Jersey Housing and Mortgage Finance Agency

Limited English Proficient (LEP) Persons: Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or

Low- and Moderate-Income (LMI) Persons: Persons with an income as defined by 42 U.S.C. § 5302 (a) (20) (A), meaning, respectively, income that does not exceed 50% of area median income, and above 50% of area median income and that does not exceed 80% of area median income.

Language Assistance Plan (LAP): A written implementation plan that addresses identified needs of the LEP persons they serve. Recipients should have a process for continuously monitoring and updating the Plan.

Party: The Complainants and Recipients.

Recipient(s): The state of New Jersey and the New Jersey Department of Community Affairs, collectively.

Sandy, or Superstorm Sandy: The storm that made landfall in New Jersey on or about October 29, 2012.

Nine Most Impacted Counties: In the State of New Jersey the county jurisdictions of Atlantic, Bergen, Cape May, Essex, Hudson Middlesex, Monmouth, Ocean and Union.

State: The State of New Jersey and each department, agency or other subpart in the New Jersey State government, whether or not directly responsible for CDBG-DR funded activities related to Sandy recovery.

Subrecipient: For purposes of this agreement, the New Jersey Redevelopment Authority, the Housing and Mortgage Finance Agency, the New Jersey Economic Development Authority, and the Department of Environmental Protection. Nothing in this Agreement changes applicable regulatory or judicial interpretations of what constitutes a subrecipient.

Tranche: The anticipated sequential allocation of Sandy CDBG-DR funding referenced in the HUD Notice as 'Round[s]', 78 Fed. Reg. 14329 & 30, and in the Action Plan as 'tranche[s]', p. iii.

Vital Document: Any document that is critical for ensuring meaningful access to the Recipient's major activities and programs by beneficiaries generally and LEP persons specifically.

IV. GENERAL PROVISIONS

- A. The term of this Agreement shall be until six months after the closeout by HUD of the grant(s) to New Jersey of all funds pursuant to Pub. L. 113-2. The effective date is the date on which the Agreement is signed by the representative of the Office of Fair Housing and Equal Opportunity on behalf of HUD.
- B. This Agreement is binding upon all of the officers, trustees, directors, agents, employees, heirs, successors and assigns of the Recipients, when acting in their official capacities on behalf of the State or DCA and the Subrecipients.

- C. This Agreement does not in any way limit or restricts the Department's authority to investigate any complaints against the Recipient pursuant to Title VI, Section 109, the Fair Housing Act, or any other statutory or regulatory authority within the Department's jurisdiction. This Agreement resolves all of the Department's outstanding concerns under these authorities to date.
- D. No amendment to, modification of, or waiver of any provision of this Agreement shall be effective unless all of the following conditions are met: (a) all signatories to the Agreement are notified in advance of the proposed amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by an authorized representative of the Recipients and the FHEO Director for Region II, or his designee. Any such amendment, modification, or waiver shall be effective only in the specific instance and for the specific purpose for which given.
- E. The Agreement does not increase or diminish the ability of any person or class of persons to exercise their rights under Title VI, Section 109, the Fair Housing Act, or any other federal, state, or local civil rights statute or authority. This Agreement does not create any private right of action for any person or class of persons not a party to this Agreement.
- F. The Recipients acknowledge that they have an affirmative duty not to discriminate under the Act and that it is unlawful to retaliate against any person or entity because that person or entity has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. The State will administer all Action Plan programs in a manner that provides fair housing choice to people of all backgrounds without discrimination.
- G. The State will ensure that all construction, reconstruction and rehabilitation of damaged, assisted housing will be conducted in a manner that affirmatively furthers fair housing and is compliant with the Fair Housing Act and the Americans with Disabilities Act.
- H. All of the provisions of this Agreement are applicable to actions taken by Recipients following the effective date of the Agreement, without regard to when the CDBG-DR funding was allocated, unless otherwise specified.
- I. Within thirty (30) days of the effective date of this Agreement, Recipients shall inform all contractors, employees and the principals of Subrecipients, responsible for compliance with this Agreement, including any officers and board members, of the terms of this Agreement and shall provide each such person with a copy of this Agreement.
- J. This Agreement will be a public document upon its effective date. A copy of this Agreement shall be made available to any person for his/her review.

- K. For the purposes of this Agreement, “days” refers to calendar days. If the reporting day falls on a weekend or a federal holiday, the report will be due the first business day after the weekend or holiday.
- L. This Agreement does not supersede, or in any manner change the rights, obligations and responsibilities of the Parties under any and all court orders, or settlements of other controversies involving compliance with federal or state civil rights statutes.
- M. This Agreement does not affect any requirements for the Recipient to comply with all requirements of the Act, Title VI or Section 109 not addressed in this Agreement.
- N. The Recipients shall designate appropriate personnel to coordinate compliance with this Agreement and communicate with the Department about the Agreement upon request at a mutually convenient time.
- O. The Parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.
- P. The Parties further agree that if the Department, Complainants or Respondents discover any typographical errors after the execution of this Agreement, the Department is authorized to correct such errors without the consent of the Parties.
- Q. The Department shall accept as true and official execution of this Agreement, a scanned or faxed copy of the executed signature page(s) contained in Section X. of this Agreement.
- R. Complainants’ signatory hereby acknowledges legal and binding authority to hereby execute this agreement on behalf of all named Complainants in this matter.
- S. Respondents’ signatory hereby acknowledges legal and binding authority to hereby execute this agreement on behalf of all named Respondents in this matter.
- T. For purposes of this Agreement, the required reports and documentation of compliance must be submitted simultaneously to:

Jay Golden, Regional II Director
Office of Fair Housing and Equal Opportunity
U. S. Department of Housing and Urban Development
26 Federal Plaza, Room 3532
New York, NY 10278
Jay.Golden@hud.gov

Wanda S. Nieves, Newark FHEO Center Director
Office of Fair Housing and Equal Opportunity
U. S. Department of Housing and Urban Development
One Newark Center, 13th Floor
Newark, NJ 07102
Wanda.S.Nieves@hud.gov

IV. RELIEF IN THE PUBLIC INTEREST

A. Fund for Restoration of Multi-Family Housing (FRM)

1. Recipients will allocate an additional \$215,000,000.00 for the Fund for Restoration of Multi-Family Housing in addition to the \$379,520,000.00 previously allocated to FRM.
2. Recipients, recognizing the significant need to support the replacement and development of multifamily housing to serve renters displaced by Superstorm Sandy, may reallocate additional funds that are not utilized or needed in any other program from CDBG-DR funding to FRM, subject to approvals required by HUD, from other programs in the approved Action Plan, in any future amendment to the Action Plan relating to the use of CDBG-DR funds, but will not reallocate funds from other programs that have been identified as serving the needs of renters, namely those programs identified as “Renter Housing and Rental Programs” in Exhibit B-1 to the March 25, 2014 Action Plan.
3. Recipients shall allocate FRM funds for all three rounds by county in accordance with percentages that are generally proportionate to the amount of damage experienced in each of the nine impacted counties. This calculation shall include funds that have already been allocated and funds to be allocated. The State agrees to set aside the following minimum percentages of the total amount allocated for FRM from all CDBG-DR funds, including but not limited to all funds allocated in the first and second tranche CDBG_DR Action Plan and any funds allocated from future federal funds and/or unexpended funds allocated from other programs pursuant to this agreement: Monmouth and Ocean Counties, 52 percent, Atlantic County, 20 percent. The State shall also give preference to the most impacted communities within each county using a prioritization list such as that proposed by NJ HMFA in May 2014 or a substantially similar list based on the degree of major and severe damage to renters.
4. Recipients shall set aside at least 60 percent of the total amount allocated for FRM from all CDBG-DR funds for developments outside Targeted Urban Municipalities (TUMs), which shall be defined for this Agreement pursuant to the definition in the rule adopted by the New Jersey Housing and Mortgage Finance Agency at 45 N.J.R. 1511(a), and the remainder shall be allocated to developments inside TUMs.

5. Of the total FRM funds a minimum of 60 percent of the total amount allocated for FRM from all CDBG-DR funds both outside TUMs and overall shall be dedicated to units that are open to families with children without preference or restriction other than described in this Agreement and affirmatively marketed to those people and groups “least likely to apply” as required by the New Jersey Qualified Allocation Plan as adopted at 45 N.J.R. 1511(a). State Uniform Housing Affordability Control, N.J.A.C. 5:80, requirements on bedroom distribution shall control.
6. The set-aside process for most impacted counties, TUMs, and families with children described above shall be implemented as follows. The State shall provide an initial application period of at least seventy-five (75) days after the effective date of guidelines adopted by NJ HMFA incorporating this set-aside process, which application process shall only require the documents referenced in Section 1 of the FRM Document Checklist proposed by NJ HMFA in May 2014, excluding the Resolution of Need, which to the degree required by state statute may be required by the time of final commitment of funds. The State shall then provide a list of the initial applications received including a listing by county, TUM/non-TUM, and families with children/other. Final applications, including the documents referenced in Section 2 of the FRM Document Checklist (exclusive of, Treatment Works Approval, CAFRA approvals, and Pinelands approvals which shall be closing requirements and not application criteria), shall be due no earlier than October 30, 2014. In the event there are not enough eligible applications from the most underserved counties and/or outside of TUMs and/or serving families with children to result in these allocations as of the October 30, 2014 deadline, Recipients agree to reserve sufficient funds required to meet those targets in subsequent rounds. In scheduling any future rounds, HMFA shall report to the public the allocation of funding designated to each underserved county, inside/outside of TUMs, and serving families with children in order to meet the funding targets. HMFA will schedule any subsequent rounds giving applicants sufficient time to prepare development plans. If, after two subsequent funding rounds, the targets have not been met, the HMFA may allocate the funds as required to generally meet the needs of low and moderate income households.
7. Recipients shall require that at least 50 percent of the units of each bedroom size in each FRM development approved by HMFA after the effective date of this Agreement shall be affordable to households at or below 50 percent of Area Median Income, including that at least 10 percent of units of each bedroom size shall be affordable to households at or below 30 percent of Area Median Income. Up to 15 percent of housing funded in TUMs may be made available to households between 60%-120% of area median income, thus providing income diversification.
8. Unless a specific action is required by federal statute or regulation, municipal support or funding for a development shall not be a point factor in any funding decisions for FRM funding provided that to the degree a resolution of need is required by state statute, Recipients may require such resolution by the time of final commitment of funds.
9. Recipients will require the greater of 15-year affordability or the length of affordability and/or extended use period required by any non-FRM source of

funding used in the project by deed restriction on all new affordable rental housing approved by the HMFA Board for funding via the Section 4.2.1, Fund for Restoration of Multi-Family Housing after the effective date of this Agreement. Nothing in this Agreement shall be interpreted to require that the deed restriction provided to enforce the length of affordability shall require monitoring by the CDBG-DR program for any period longer than required by federal statute or regulation; monitoring pursuant to other established federal and/or state programs shall be acceptable.

10. To minimize relocation and enable return of residents to their pre-storm communities, Recipients will require, as a contractual condition of all loans or grants for developers and operators of rental housing assisted under the Action Plan, including both FRM and any other rental housing funds for which a final commitment of funds is made after the effective date of this agreement, that such units will be made available for the first 90 days to LMI applicants who were displaced by and/or experienced major or severe damage from Superstorm Sandy based on either FEMA registration or alternative proof of damage, impact or displacement, as to be further set forth in a policy to be adopted by the HMFA.
11. Unless required by federal statute or regulation, no household occupying, or which hereafter occupies, an affordable unit approved by HMFA for funding through FRM after the effective date of this Agreement shall be evicted solely because the household income rises above the initial income eligibility ceiling.
12. Within sixty (60) days of the effective date of this agreement, the New Jersey Housing and Mortgage Finance Agency shall adopt modifications to its FRM Program Guidelines consistent with this Agreement.

B. Fund for Restoration of Multifamily Housing (FRM) – Public and Assisted Housing and Sandy Special Needs Housing Fund (SSNHF)

1. The \$30,000,000 in FRM-Public Housing funds in the first and second tranche Action Plans and the \$60,000,000 in SSNHF funds referenced in this agreement shall be considered as separate from the FRM funds and not subject to the requirements outlined above in section IV(A) of this Agreement; all other FRM funds shall be subject to the requirements outlined above in section IV(A).
2. No later than 45 days after the effective date of this Agreement, Recipients will consult with all Public Housing Authorities (PHAs) in the State, and assisted housing owners and operators to detail the damage to these homes by Superstorm Sandy, and prepare, submit to HUD and post on the DCA's Sandy Website, a detailed description of the type and degree of damage from Sandy to PHA-owned and operated and assisted housing, by development and building, including a comprehensive cost estimate for remaining repairs, and describe the remaining unmet needs to recover from Superstorm Sandy so that reasonable mitigation measures can be undertaken. As

part of this analysis, the State shall indicate which public or assisted housing still have units damaged by Sandy that remain uninhabitable as of the time of the analysis, and prioritize funding to address unmet needs to rehabilitate or reconstruct those units without loss of number of units or number of bedrooms per unit in the municipality in which those units existed before Sandy.

3. No returning resident duly qualified for public or assisted housing prior to Sandy will be subject to any recertification requirement except continuing household income qualification if required by other applicable federal regulations and assignment to unit with the number of bedrooms if required by the applicable regulations. No household will be denied the right to return hereunder because of a change in household members if the head of household or a majority of members of the pre-Sandy household apply to return but may be required to occupy a unit with the number of bedrooms required by the applicable regulations.
4. Notwithstanding any agreement in any other matter, Recipients shall allocate at least an additional \$10,000,000 for SSNHF which shall result in total SSNHF funding from CDBG-DR funds of no less than \$60,000,000.
5. DCA will apply for a waiver necessary to allow CDBG-DR funds to be layered with other federal funding sources such as HOME to produce supportive housing and/or other affordable rental housing.

C. Tenant Based Rental Assistance

1. CDBG-DR tenant-based rental assistance is restricted to three months unless specified by a waiver authorized by HUD. A waiver request is pending with HUD to allow the assistance for a maximum of 24 months. Provided HUD approves any and all necessary waivers, Recipients will continue to develop a Tenant-Based Rental Assistance Program and apply to HUD for any waivers necessary to implement the program.
2. Recipients shall allocate at least an additional \$15,000,000 for tenant-based rental assistance. Such funds shall supplement, and not supplant, the \$17,000,000 proposed by the State to be reallocated from the Landlord Incentive Program to tenant-based rental assistance.
3. These funds shall be allocated as follows:
 - a. There will be a preference for households at or below 30% of area median income;

application, and an explanation of the determination, the right to appeal a final decision to the Office of Administrative Law, and the information customarily required in a New Jersey court filing pursuant to N.J. Rules of Court 4:4-2 regarding the ability to find an attorney through the Lawyer Referral Service or Legal Services of New Jersey, which information shall be provided consistent with the LEP requirements in this Agreement.

2. For any applicant deemed to be eligible in the above-described review, the applicant shall be placed in the order of priority that the applicant would have been in had the application initially been accepted, and funded according to that priority. Recipients shall ensure sufficient funds remain in the RREM program to effectuate this priority.
3. Within thirty (30) days of the completion of the review required pursuant to this subsection, DCA shall provide to FHEO an updated version of the information required to be provided with respect to the RREM program pursuant to this Agreement and an analysis of the application approval rate for RREM by race, ethnicity and income. DCA shall as part of that report provide an assessment of any further adjustments necessary to reduce or eliminate disparities.
4. DCA shall develop and implement a system through which all RREM applicants can receive the most current information on their application's status by telephone, consistent with the LEP requirements in this Agreement.

E. LMI Homeowners Rebuilding Program

1. DCA shall administer a new program serving homeowners who were not served by the prior RREM program, limited to the LMI populations, particularly those who are LEP, of the nine impacted counties. DCA has committed \$40 million for this program; a minimum of \$10 million of the funds committed to this program shall be initially reserved for owners of manufactured housing whose homes were damaged, subject to HUD's approval if necessary. DCA agrees to make available to the public, including on DCA's Sandy Website, the eligibility criteria for the program, including the manufactured housing component, at or before the time that the program opens to applicants.
2. Funding for the new program not needed for the manufactured housing plan described above shall be distributed to homeowners not previously served by RREM with major or severe damage. The application process shall be in all aspects implemented in concert with the housing counseling and outreach and LEP requirements in this Agreement, and shall be open to the nine previously identified most impacted counties. DCA will accept alternative proof of substantial damage for applicants who are unable to or cannot get a substantial damage letter in this program, using

the same provisions provided for RREM in the LEP section of this agreement.

3. Any funds remaining from implementation of this program or from other allocations to the RREM program may be reallocated to the FRM program and DCA may provide that such reallocation will happen as part of its CDBG-DR third tranche action plan so that no further approvals will be needed for such reallocation to take place.

F. Housing Counseling and Outreach

1. Recipients shall implement outreach and housing counseling services to LMI homeowners and renters as follows:

- a. DCA has identified organizations and community partners who will conduct additional robust outreach for the FRM and LMI Homeowners Rebuilding programs in the nine most impacted counties. DCA will fund those outreach efforts with funds totaling \$2 million beginning in July 2014. As part of these efforts, DCA shall provide outreach to LEP communities in each of the nine impacted counties by contracting or subcontracting with community-based organizations with experience working with racial or ethnic minority communities and low and moderate income people in that county in areas most heavily impacted by Sandy, including LEP communities, and the majority of the outreach funding shall be provided to organizations with such experience.

- b. DCA will convene, within 10 days from the date of execution of this agreement, a meeting of a working group to discuss community outreach planning. The Complainant organizations will be invited to this meeting.

- c. DCA will provide housing counseling services through its existing network of HUD-certified housing counseling agencies and, if needed, may issue a separate RFP for such services in the nine previously identified most impacted counties. A proposal may include one or more counties. These housing counseling agencies will provide comprehensive counseling services for both homeowners and renters in order to identify all available homeowner and renter programs and other available resources and to assist with both the application and processing once approved, all in one-stop locations in all nine previously identified most impacted counties. Housing counseling shall be provided in facilities located in lower-income communities impacted by Superstorm Sandy. The counseling shall include financial literacy training, fair housing counseling including mobility counseling and fair housing rights, and any assistance needed to residents of public and assisted housing that are required to be relocated. Counseling agencies shall be required to demonstrate

their ability to collect and report agency and client-level data including client intake, file maintenance, financial and credit analysis, outreach, client notification, and reporting pursuant to 24 CFR 214.103 (f), and meet any additional requirements to interface with state and federal reporting on CDBG-DR funds including but not limited to collecting and reporting the information required pursuant to the Recordkeeping and Reporting provisions of this Agreement.

d. LEP services: All outreach and housing counseling services provided pursuant to this section shall be performed in accordance with the State's LAP. The specific references to LEP communities above shall not be construed as limitations on the full compliance of all such services with the LAP.

e. Recipients agree to provide a minimum of \$2 million per year for housing counseling services until and including the year when the HUD closeout for the CDBG-DR funding occurs, with the final year to be prorated depending on when the closeout occurs and if CDBG-DR funds are available.

G. Access to All CDBG-DR Funded Programs for LMI and LEP Persons who are Potentially Eligible for the Programs

1. Pursuant to the non-discrimination requirements of Title VI at 24 C.F.R. § 1.4, the Recipients are required to take reasonable steps to provide meaningful access to federally funded programs for LEP persons. To comply with their Title VI LEP obligations, the Recipients agree to take the following actions.

a. Completion of Four Factor Analysis. Within 60 days of execution of this Agreement, DCA shall provide a complete Four-Factor Analysis for the nine most affected counties as referenced in the HUD LEP Guidance and shall submit a copy to FHEO. This shall include determining the following:

i. Number or proportion of LEP persons eligible to be served or likely to be encountered by the program, supported by census data or other relevant data, including language for LEP populations of 5% or 1,000 persons in each of the nine most affected counties, considering all languages in the following chart:

Major Foreign Languages Spoken in Nine Most Affected Counties

Sandy-Affected County	Top Non-English Languages Spoken	Estimated LEP Population
Atlantic County	Spanish Vietnamese Chinese	15,800 2,000 2,000
Bergen County	Spanish Korean Polish	41,300 26,200 8,300
Cape May County	Spanish	2,300
Essex County	Spanish Portuguese French Creole	59,600 15,300 8,500
Hudson County	Spanish Arabic Tagalog	105,400 5,000 4,700
Middlesex County	Spanish Chinese Gujarati	53,800 11,700 10,500
Monmouth County	Spanish Portuguese Chinese	21,300 4,000 3,900
Ocean County	Spanish Italian Polish	13,400 1,400 1,000
Union County	Spanish Portuguese French Creole	70,400 9,100 5,000
Total	11 LEP Populations	

- ii. Frequency with which LEP persons come into contact with each program funded by CDBG-DR;
 - iii. Nature and importance of the program, action or service; and
 - iv. The resources available to execute the program and the costs of providing LEP services.
- b. Posting of Four-Factor Analysis. Within ninety (90) days of execution of this Agreement, DCA shall post a complete Four-Factor Analysis completed in accordance with Paragraph 1 above, on DCA’s website under the “Sandy Recovery Division” link.
- c. New CDBG-DR LAP. Within ninety (90) days of execution of this Agreement, DCA shall develop a revised LAP for

Complainants. The outreach to community-based groups that work with LEP, LMI and minority communities described in this section shall be coordinated with and in addition to the outreach efforts required by Section IV. F. of this agreement.

3. **Develop a Training Plan.** Within sixty (60) days from the execution of this Agreement, DCA will develop and provide to HUD a Training Plan that describes training, responsible entities and time frames for completion of training for DCA staff members with public contact, as well as employees or contractors funded from CDBG-DR funds, in LEP Guidance and the LAP, including provisions for training of staff who are responsible for monitoring Subrecipients.
4. **Designate a LAP Coordinator.** Within sixty (60) days from the execution of this Agreement, DCA will hire or identify a LAP coordinator who shall be identified in the body of the LAP, including such person's name, email address, phone number and address, and provide public notice on DCA's Sandy Website of contact information for the LAP Coordinator in appropriate languages;
5. **Develop a Language Bank.** Within sixty (60) days from the execution of this Agreement, DCA shall identify staff and contractors who are fluent in various languages, their contact names, telephone numbers and/or email addresses, and their hours of availability. If a Language Bank list already exists, DCA shall submit it to HUD within 10 days of execution of this Agreement. DCA shall use this list to support the provision of translation services in locations that have contact with the public.
6. **Provide a List of Vital Documents to be Translated.** Within twenty (20) days of HUD's approval of the LAP, DCA shall provide a list of vital documents that will be translated and the timetable for translations, for each Sandy-related program, including:
 - a. **Reconstruction, Rehabilitation, Elevation and Mitigation (RREM) Program**
 - b. **Landlord Incentive Program**
 - c. **Landlord Rental Repair Program**
 - d. **Special Needs Housing Program**
 - e. **Large Multifamily Program**
 - f. **Neighborhood Enhancement Program**

provide written notice, including guidance and technical assistance, to all of the Subrecipients in DCA's CDBG-DR program regarding their obligations to provide appropriate LEP services ensuring access to federally funded programs in compliance with Title VI. DCA shall provide a copy of this written notice to HUD at least ten (10) days prior to disseminating the notice to Subrecipients. This notice shall:

- i. Inform Subrecipients that they must take reasonable steps to provide meaningful access to eligible LEP persons to comply with Title VI requirements and provide a link to the HUD LEP Guidance and other technical assistance resources.
 - ii. Recommend that Subrecipients follow the HUD LEP Guidance and conduct a Four-Factor Analysis to determine the need for LEP services in their program;
 - iii. Recommend that Subrecipients complete a LAP, if necessary, based on the Four-Factor Analysis; and
 - iv. Require Subrecipients to maintain records regarding their efforts to comply with Title VI LEP obligations, including documents related to the Four-Factor Analysis, the LAP, and LEP services provided to eligible persons. Such records shall be available for monitoring reviews of Subrecipients conducted pursuant to 24 C.F.R. § 570.492. See 24 C.F.R. § 570.490(b).
 - v. Recipients affirm that all LEP services or actions contained in the LAP will apply to any program administered by DCA or Subrecipients servicing individuals that are funded by CDBG-DR funds, including for renters applying for assistance, etc.
 - vi. Monitoring of Subrecipients. DCA shall monitor Subrecipients for compliance with Title VI LEP obligations when it conducts regular compliance monitoring of Subrecipients as required by HUD regulations. See 24 C.F.R. § 570.492. DCA shall maintain appropriate monitoring records to facilitate HUD reviews. See 24 C.F.R. § 570.490; 24 C.F.R. § 570.493.
10. Database Update. Within forty five (45) days of execution of this Agreement, DCA shall ensure that its database systems are updated to include a field that can be populated for "LEP/language assistance" and the language needed (if any) for data collected about applicants

for assistance or other participants including small business owners. In this way, it can begin to collect needed data about the LEP population it serves and the specific language needs of its participants and applicants.

11. **Waitlist Review.** Within sixty (60) days of execution of this Agreement, DCA shall send a letter to each individual who has been accepted or wait-listed for the RREM program in English and Spanish and including a reference to a toll free telephone number which provides information in all of the major languages identified above to determine if any such individuals require LEP assistance; if so, DCA shall ensure that the individual's file identifies such individual as "LEP" and the type of language assistance needed. DCA shall also include such a letter as part of informing all applicants who were initially rejected of the results of the review of their applications. When contacting each individual who has been accepted, wait-listed, or had their application's denial reviewed, DCA shall also inform the individual that free language assistance is available for persons who need such assistance, and the information is being collected in order to better assist them. The initial written communication shall be sent in both English and Spanish. The Department shall be provided with the results of this effort within ninety (90) days of the execution of this Agreement.
12. **Robust LEP Outreach.** Within sixty (60) days of execution of this Agreement and after completion of the actions described above, DCA shall initiate its LEP outreach plan consistent with that contained in its LAP and in partnership with the outreach and counseling organizations selected pursuant to Section VI H. This outreach shall, in addition to providing information on all available CDBG-DR programs for both renters and homeowners, inform the LEP community that DCA will open a new LMI Homeowners Rebuilding program. The information provided shall include an indication that bilingual staff and interpretation services are available on DCA's Sandy Website, by phone or in person at any site serving the public, without charge.
13. **State and DCA Sandy-Related Press Releases, etc.** Within forty five (45) days of the execution of this Agreement, the State and DCA shall ensure that all official press releases and other written announcements that are issued pertaining to Sandy-related activity that is funded by CDBG-DR monies and issued by DCA or other State agency, be posted and provided in English and Spanish.
14. **DCA Website.** Within one hundred twenty (120) days of the execution of this Agreement, DCA shall ensure that DCA's Sandy Website is properly modified to reflect that all provisions are

compliant and shall consult with FHEO staff to address each individual concern to FHEO's satisfaction.

15. **Access to LEP Population for Units Produced with Federal Funding.** For every unit of housing that is initially rented or made available for sale on or after the effective date of this Agreement and which receives or has received CDBG-DR funds, the availability of the unit shall be listed, with basic characteristics such as bedroom size, location, and rent on a single statewide web site fully compliant with the LAP prior to the rental or sale of that unit with information on how to rent or purchase that unit and a statement that such unit is subject to the provisions of the Fair Housing Act and has a priority for occupancy by people impacted by Superstorm Sandy.
16. **Proof of Substantial Damage.** DCA shall accept alternative evidence of substantial damage as approved by HUD in Substantial Amendment No. #8 to the State's Action Plan. For RREM, if necessary to meet LMI targets, DCA shall provide funding in accordance with the level of damage to LMI households with damage of less than 50 percent of home value.
17. **LAP Appeal Process.** The LAP will be amended to include an appeals process for application denials, and the availability of either a Hearing Office who speaks the language of the LEP individual, or the provision of translation services in that LEP individual's language. The public and advocacy groups will be notified that language assistance is available for appeals if an LEP individual is rejected from applying for any disaster recovery program. Further, this information must be posted in all Housing Recovery Centers in a location that is visible to the public.
18. **DCA will ensure that it complies with LEP requirements, including providing publicly available eligibility criteria and application information in appropriate languages, translation of vital documents, providing information on websites, and communicating with individuals in appropriate languages, and that these resources are available to applicants before it markets to the public or accepts applications for the programs described in Sections IV. D. and E. of this Agreement. Starting sixty (60) days after the execution of this agreement, DCA will also ensure that all FRM-funded housing is marketed in a manner that complies with the LEP requirements set forth in this Agreement.**

V. SECTION 3 COMPLIANCE

A. Specific Provisions for Section 3 Compliance

1. Section 3 Oversight and Administration

- a. Unless compliance with applicable federal or state procurement statutes and regulations require a longer time period, within sixty (60) days of the effective date of this Agreement, the State shall complete selection of a firm responsible for ensuring compliance with Section 3 of the Housing and Community Development Act for its CDBG-DR funded activities.
- b. Within ninety (90) days of the effective date of this agreement, DCA shall hire or appoint a full time Section 3 coordinator for its CDBG-DR activities and notify FHEO of the name and contact information for its selection.
- c. DCA shall notify the Department in writing within 10 days after removing or replacing its Section 3 Coordinator(s).
- d. DCA shall take all appropriate measures to ensure that the person so hired or appointed will have the proper authorization and powers to ensure compliance with this Agreement and Section 3.

2. Section 3 Plan

- a. DCA shall develop and provide to HUD a Section 3 Plan for its CDBG-DR activities within ninety (90) days of the execution of this Agreement. HUD will complete its review of the plans within thirty (30) days of the plan being provided to HUD. The State shall adopt a final version of a Section 3 plan within one hundred fifty (150) days of the effective date of this Agreement. In addition, within one hundred twenty (120) days of the execution of this Agreement, DCA shall develop and provide to HUD a Section 3 Implementation Guide to facilitate consistent compliance with Section 3 in all aspects of the State's CDBG-DR activities. All final documents should clearly assert that Section 3 compliance is required by law, and describe specific penalties that may be imposed upon Subrecipients, contractors, and subcontractors for noncompliance. Section 3 Plans and Implementation Guides shall be posted on DCA's Sandy Website at each of the deadlines in this paragraph so they are accessible to prospective sub recipients, contractors, Section 3 residents and Section 3 businesses.
- b. No changes may be made to these Section 3 plans without the written consent of HUD.

3. Annual Reports. DCA shall timely submit Section 3 summary reports for all covered activities undertaken by the State, its Subrecipients, developers, contractors and subcontractors in accordance with the Section 3 annual reporting requirements at 24 CFR. § 135.90.

4. **Outreach and Training Efforts:**
 - a. **Within forty-five (45) days of the effective date of this Agreement, DCA must convene an internal information session and review the provisions of this Agreement with its key managers and staff.**
 - b. **Within one hundred fifty (150) days of the effective date of this Agreement, DCA shall develop and provide to HUD Section 3 training and outreach materials for staff, Section 3 businesses and Section 3 covered persons that describe the requirements of this Agreement, the Section 3 regulations and the State's Section 3 Implementation Plan. During the course of this Agreement, DCA must receive approval from HUD to use any new or modified Section 3 materials for its training/outreach efforts.**
 - c. **Within thirty (30) days of HUD's approval, DCA shall initiate outreach and education efforts to Section 3 businesses and Section 3 covered individuals, especially targeting business communities and potential Section 3 businesses in a manner consistent with the Section 3 Plan. It should coordinate its outreach efforts with local chambers of commerce and other organizations and agencies that engage in business growth activities. DCA shall include in its monitoring reports a schedule of events and activities under this section.**
 - d. **HUD may, at its discretion, direct Recipients to increase their outreach efforts or direct them to focus their outreach efforts to particular groups, organizations or a subset of Section 3 residents or Section 3 businesses. Outreach efforts for all Section 3 activities should include, but are not limited to, posting notices on its website, posting notices in the common areas or other prominent areas of its housing developments, advertising through local media, such as community television networks, newspapers of general circulation, minority owned newspapers, local business trade magazines/flyers, radio advertising, and internet media outlets (ex. Face book, Twitter, etc.).**
 - e. **DCA agrees to utilize the Section 3 Business Registry program provided by HUD and to encourage Section 3 individuals and businesses to sign up for the Business Registry.**

B. Section 3 Monitoring and Enforcement by DCA

1. DCA shall establish an active Section 3 enforcement and monitoring process applicable to itself and to its Subrecipients and assign or designate appropriate personnel to do so, consistent with the terms of this Agreement. The enforcement and monitoring process must provide a methodology capable of monitoring the State's internal compliance with Section 3 and this Agreement, and monitoring contractors, subcontractors and private property management companies' compliance with Section 3. DCA shall refrain from knowingly entering into contracts with any contractor currently in violation of Section 3 pursuant to 24 CFR § 135.32(d).

VI. FAIR HOUSING TRAINING

- A. DCA will train their employees and contractor representatives (and those of their sub-recipients) who are responsible for the implementation of recovery programs on the requirements of the Affirmatively Furthering Fair Housing regulations and on civil rights compliance.
- B. The State will, within ninety (90) days of HUD's approval of this Agreement, require its employees, contractor representatives and agents and those of Subrecipients, charged with implementation of recovery programs, to participate in training on Affirmatively Furthering Fair Housing and on civil rights compliance, provided by HUD or by some entity approved by HUD using a curriculum approved by HUD. The training will be recorded in video format and all Subrecipients' principals shall certify that they have viewed the training prior to and as a condition of all contracts.
- C. The Respondent shall forward to HUD objective evidence of the successful completion of training required by this Agreement in the form of a Certificate or a letter from the entity conducting the training, together with a list of participants, within five (5) days of the completion of the training, as evidence of compliance.

VII. PREPARE A 2015 ANALYSIS OF IMPEDIMENTS

- A. The State agrees by January 15, 2015 to prepare its 2015 Analysis of Impediments to Fair Housing Choice (AI) including identifying post-storm impediments to fair housing in the storm affected counties as required by HUD's March 2013 Notice, and to submit the AI to HUD for review and approval.
- B. HUD agrees to provide technical assistance to the State regarding its preparation of the 2015 Analysis of Impediments and the State agrees to request technical assistance when preparing the AI.

VIII. REPORTING AND RECORDKEEPING

- A. **Quarterly reporting.** DCA will provide to FHEO and Complainants a quarterly report with the following information to track compliance with this Agreement:
1. The first Report will be due August 1, 2014. Thereafter, Reports will be due quarterly for the duration of the Agreement.
 2. An updated list of each applicant to RREM and the LMI Homeowners Program that provides the application ID, application status (i.e. approved, wait listed, rejected, still processing, in appeal), LMI status, LEP status, race, ethnicity, zip code, municipality, and county without personally identifying information.
 3. The most current list of all units and projects funded through FRM, FRM-PHA, SSNHF, and all other programs in Section 4.2 of the Action Plan, including street address, municipal location, family/senior/supportive status, and income levels served. The State will also post this information on DCA's Sandy Website.
- B. **Quarterly Reporting on LEP.** DCA will submit to FHEO and Complainants an Implementation Report ("Report") on a quarterly basis that quantifies all requests for LEP services, LEP services that have been provided, and also identifies all actions taken to implement the Agreement.
1. The first Report will be due August 1, 2014. Thereafter, Reports will be due quarterly for the duration of the Agreement.
 2. Each Report shall contain a summary and a numerical count of all requests for LEP services and all LEP services that have been provided by DCA.
 3. Each Report shall contain a narrative regarding DCA's monitoring of sub-recipients' LAPs and LEP compliance and provide an overview of DCA's findings.
 4. In the Reports due August 1 of each year for the remainder of the Agreement, DCA will submit an updated LAP to HUD for approval. If DCA has not updated the LAP, the Report shall contain an explanation of why DCA's current LAP is effective and sufficient and does not require updating.
- C. **Quarterly Reporting.** DCA will provide to FHEO and Complainants and concurrently post on DCA's Sandy Website a quarterly report with the following information to track compliance with this Agreement:

1. The first Report will be due August 1, 2014. Thereafter, Reports will be due quarterly for the duration of the Agreement.
 2. DCA will report cumulative numbers on of households served by FRM, FRM-PHA and SSNHF including household income as a percentage of area median family income as defined by HUD, the race and ethnicity of the head of the household if available, the household's LEP status, zip code, Census tract, municipality, and county.
 3. DCA will provide updated lists of all projects funded through all infrastructure, small business, economic development, and other programs with municipal location and LMI benefit, and the methodology used to determine that LMI benefit.
 4. DCA will provide total LMI benefit of all projects funded to date.
- D. Simultaneous with its quarterly submission to HUD, DCA will post reports on its Sandy Website containing all data reported in the HUD Disaster Recovery Grant Reporting System (DRGR) with respect to Superstorm Sandy.
- E. Recipients will cooperate with all requests from Complainants and other members of the public pursuant to the New Jersey Open Public Records Act. Nothing contained in this Agreement shall be construed to limit or affect Complainants' or any other parties' rights to request documents pursuant to the New Jersey Open Public Records Act.
- F. DCA shall require all Subrecipients of CDBG-DR funding to collect data that enables timely compliance with this section.
- G. Recordkeeping. During the term of this Agreement, DCA shall maintain the following records and upon request, make these records available for review by the Department. See 24 C.F.R. §§ 570.490, 570.492 and 570.493.
1. DCA shall maintain a monitoring file for each Subrecipient. The file will include: 1) any documentation regarding any LEP guidance or technical assistance provided by the Recipient; and 2) any documentation of Four-Factor Analyses and LAPs, or comparable documents, that were prepared by sub-recipients pursuant to Section VI. of this Agreement.
 2. DCA shall maintain files containing documentation of its efforts to meet the obligations of this Agreement and documentation of the information used to generate any of the reports required pursuant to this Agreement.
 3. DCA shall require all Subrecipients of CDBG-DR funding to retain and provide to DCA all records containing documentation of its efforts to meet the obligations of this Agreement and documentation

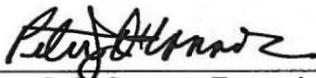
of the information used to generate any of the reports required pursuant to this Agreement.

IX. MONITORING AND COMPLIANCE WITH THIS AGREEMENT

- A.** The Recipients and Complainants will share information, hold periodic meetings and agree to participate in good faith in special meetings called by any Party to address compliance issues. Complainants agree to provide the Recipients notice of an alleged violation of the Agreement. Within 20 days of the notice the parties agree to meet and confer to discuss the alleged violations raised by Complainants prior to seeking enforcement through court proceedings.
- B.** An action by Complainants or any of them for breach of this Agreement may not be commenced until and unless the Recipients have been given written notice specifying the basis for the assertion of a material breach, a reasonable opportunity to cure in accordance with Section 11A, and have failed to cure or take steps to cure. Each party agrees that, in the event of a breach of this Agreement, the harmed party is limited to seeking injunctive relief to compel compliance with this Agreement, and reasonable attorney's fees related to any action to enforce the Agreement. Jurisdiction to enforce the agreement through a civil action by Complainants shall lie in the United States District Court or in New Jersey state court with venue in Superior Court, Law Division, Mercer County or Superior Court, Appellate Division, as applicable.
- C.** FHEO will monitor compliance with this Agreement, which may include, but is not limited to: reviewing reports required by this Agreement; interviewing the Recipients' staff and beneficiaries; conducting on-site reviews; and examining documents. By this Agreement, the Recipients will assure full cooperation with the monitoring review undertaken by the Department and assures it will produce requested data or information in a timely fashion.
- D.** Upon a finding of material non-compliance with this Agreement, FHEO will provide the Recipients with a written statement specifying the facts of the alleged material non-compliance and a reasonable opportunity to resolve or cure the alleged material non-compliance including an opportunity to meet and provide evidence supporting compliance. If after the above process, the Recipients have not satisfactorily resolved the claims of material non-compliance, the Department may take any contractual, statutory, administrative or regulatory remedy available to the Department to resolve the outstanding findings of non-compliance, including but not limited to referral to the Attorney General of the United States, to commence a civil action in the appropriate U. S. District Court, pursuant to §§ 810(c) and 814(b) (2) of the Act. The Recipients retain any due process or other rights to review or appeal the Department's determination. It is understood that no conditions in this Agreement, however, will limit or restrict the Department's legal rights to enforce Title VI or other applicable laws and regulations.
- E.** Prior to the expiration of any timeframe in this Agreement, the Recipients may submit a request for an extension supported by documentation of good cause. The Department shall review requests for extensions and grant them as a modification to this Agreement if they are reasonable, which shall be in their sole discretion to determine.

- F.** Failure by HUD or Complainants to enforce this entire Agreement or any provision in the Agreement with regard to any deadline or any other provision herein shall not be construed as a waiver of its right to do so regarding to other deadlines and provisions of this Agreement. Furthermore, HUD's or Complainants' failure to enforce this entire Agreement or any provision thereof shall not be construed as a waiver of any obligation of the Recipient under this Agreement.
- G.** If any section of this Agreement is determined by a court to be in violation of the laws of the State, federal law or regulation, or against public policy, that section shall be severable and the remainder of the Agreement shall continue to operate in full force.
- H.** This Agreement contains the entire Agreement and understanding between the Parties. With respect to this Agreement, no representations, promises, agreements or understandings, written or oral, not herein contained shall be valid or binding unless the same is in writing and signed by the party intended to be bound.
- I.** This Agreement is the result of conciliation negotiations undertaken in good faith and in that regard the rule of contractual construction that an ambiguous term shall be construed against the drafter shall not be employed.
- J.** Each of the Parties represents and warrants to the others that it has had this Agreement reviewed by counsel prior to execution.

X. SIGNATURES



Peter J. O'Connor, Executive Director
FAIR SHARE HOUSING CENTER, COMPLAINANT

5/29/14

Date

Frank Argote-Freyre
Frank Argote-Freyre, President
LATINO ACTION NETWORK, COMPLAINANT

MAY 29, 2014
Date



Richard Smith, President
COMPLAINANT NJ STATE CONFERENCE
OF THE NAACP

05.29.2014

Date


COUNSEL FOR COMPLAINANTS

5/29/14
Date



[RESPONDENT]

5-30-14

Date


COUNSEL FOR RESPONDENTS

5/30/14
Date

EXHIBIT 5-5
CDBG COMPLIANCE PROVISIONS
FOR
PROFESSIONAL SERVICES CONTRACTS
(REVISED 6/10/15)
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1. **EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)**
(applicable to contracts and subcontracts above \$10,000)

During the performance of this contract, the Contractor agrees as follows:

- A. 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; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. 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 without regard to race, color, religion, sex, or national origin.

- C. 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 Contract Compliance Officer 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.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by 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 others.
- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, 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 a 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 interest of the United States.

2. **CERTIFICATION OF NONSEGREGATED FACILITIES**

(applicable to contracts and subcontracts over \$10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

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

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

3. CIVIL RIGHTS

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

4. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Contractor shall comply with the provisions of 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. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

5. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training

positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract 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.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

6. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)

(applicable to contracts and subcontracts over \$10,000)

- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, 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 Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. 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.

8. AGE DISCRIMINATION ACT OF 1975

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

(applicable to contracts and subcontracts exceeding \$100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor or subcontractors, 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 Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c-8) 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 Section 308, and all regulations and guidelines issued thereunder.

- C. A stipulation that as a condition for the award of the 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, is under consideration to be listed on the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section 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.

10. FLOOD DISASTER PROTECTION

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

11. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

The State of New Jersey, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the State's final closeout of the grant.

12. INSPECTION

The authorized representative and agents of the State of New Jersey and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

13. REPORTING REQUIREMENTS

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

14. CONFLICT OF INTEREST

A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED

(applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this contract, the Contractor agrees as follows:

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure 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.

B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer 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.

C. Contractors shall incorporate foregoing requirements in all subcontracts.

16. PATENTS

A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

17. COPYRIGHT

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

18. TERMINATION FOR CAUSE

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

19. TERMINATION FOR CONVENIENCE

The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Contractor. If the contract is terminated by the Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

20. ENERGY EFFICIENCY

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

21. SUBCONTRACTS

- A. The Contractor shall not enter into any subcontract with any subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contacting programs by any agency of the United States Government or the State of New Jersey.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.
- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

22. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

23. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

24. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

25. CHANGES

The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

26. PERSONNEL

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner. All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

27. ANTI-KICKBACK RULES

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

28. ASSIGNABILITY

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Owner provided that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

29. INTEREST OF CONTRACTOR

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

30. POLITICAL ACTIVITY

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

31. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this contract.

32. DISCRIMINATION DUE TO BELIEFS

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

33. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

34. LOBBYING

The Contractor certifies, to the best of his or her knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with 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.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction.

CHAPTER IV

LABOR STANDARDS

1. PURPOSE

The purpose of labor standards monitoring is to determine whether the contractors, subcontractors, borrower, and/or sub-recipients have complied with the following applicable statutes:

- A. Davis Bacon and Related Act and NJ Prevailing Wage Act. All laborers and mechanics employed by construction contractors or sub-contractors under contract in excess of \$2,000 financed in whole or in part with grants or loans under the CDBG/DR Program shall be paid wages at rates not less than those prevailing on similar construction. The Davis-Bacon Act as amended (40 U.C.S. 276(a)- et seq) applies to the rehabilitation of residential property only if such property equals or exceeds eight units.
- B. Copeland Act. The Copeland Act, known as the "anti-kickback" prohibition, is applicable to work performed by laborers and mechanics. Implementing Department of Labor regulations provide that all laborers and mechanics shall be paid unconditionally and not less often than once a week and without subsequent deduction or rebate except "permissible" salary deductions. Contractors and sub-contractors are required to submit appropriate weekly compliance statements and payrolls to the Contractors, subcontractors, borrower, and/or sub-recipients .
- C. Contract Work Hours and Safety Standards Act. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) provides that laborers or mechanics shall receive compensation at a rate not less than one and one half times their basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any work week. In the event of violations, the contractor or sub-contractor shall be liable to any affected employee for his unpaid wages.

All contractors, subcontractors, borrower, and/or sub-recipients are required to administer and enforce the labor standards requirements set forth in Section 570.605 of the regulations of the Housing and Community Development Act of 1974.

Federal Labor Standards Provisions

**U.S. Department of Housing
and Urban Development
Office of Labor Relations**

Applicability

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 than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 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 for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(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 therefor 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 in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, 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 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 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 1215-0140.)

(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 Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working 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 of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. 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 or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (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) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request 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 contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

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

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the 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 performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by 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 on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated 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 the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed 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 in 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 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides 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 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 such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the 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 shall be responsible for compliance by any subcontractor 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 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, (Public Law 91-54, 83 Stat 96). 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 subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

2. Meeting Labor Standards Contract Requirements

A checklist has been prepared to assist contractors and subcontractors in meeting contractual labor standards responsibilities. All major administrative and procedural activities have been covered in the sequence they will occur as the construction project proceeds. Careful attention to and use of the checklist should result in a minimum of labor standards problems.

A. Explanatory Notes

The word “employer” as used below refers to the project contractor, each sub-contractor, or each lower-tier sub-contractor. Payrolls and other documentary evidence of compliance are required to be sent to the recipient for review (all to be submitted through the project contractor). The delivery procedures are as follows:

- a. Each lower-tier sub-contractor, after careful review, submits required documents to the respective sub-contractor.
- b. Each sub-contractor, after checking his/her own and those of each lower-tier sub-contractor he/she may have, submits required documentation to the contractor.
- c. The contractor, after reviewing all payrolls and other documentation, including his/her own, and correcting violations where necessary, submits all to the recipient.

All employers should ensure each of the following statements are true. If any statement is not true, the contractor or his/her representative should contact the recipient for special guidance.

B. Before construction begins each employer has:

- a. Not been debarred or otherwise made ineligible to participate in any federal or federally-assisted project.
- b. Received appropriate contract provisions covering labor standards requirements.
- c. Reviewed and understands all labor standards contract provisions.
- d. Received the wage decision as part of the contract.
- e. Requested through the recipient and received the minimum wage for each classification to be worked on the project not included on the wage decision by the additional classification process and before allowing any such trades(s) to work on the project.
- f. Requested and received certification of his/her apprenticeship program from the Federal Bureau of Apprenticeships and submitted a copy of an Apprenticeship Standards/Apprenticeship Joint Approval form to the recipient prior to employment.

C. At the construction start the contractor has:

- a. Notified recipient of construction start date in writing.
- b. Has placed each of the following on a bulletin board prominently located on the project site which can be seen easily by the workers (and replaced if lost or unreadable any time during construction):
 - i. Wage Determinations ([State](#) and [Federal](#))
 - ii. Notices to Employees ([WH1321](#)) Employee Rights under Davis-Bacon Act signage
 - iii. Safety & Health Protection on the Job (DOL)
- c. Before assigning each project worker to work, has obtained worker's name, best mailing address, and Social Security Number.
- d. Has obtained a copy of each apprentice's certificate with the apprentice's registration number and his/her year of apprenticeship.
- e. Has informed each worker of:
 - i. his/her work classification (journeyman or job title) as it will appear on the payroll.
 - ii. his/her duties of work.
 - iii. the US Department of Labor's requirement on this project that he/she is either a journeyman, apprentice, or laborer
 - iv. If journeyman, he/she is to be paid journeyman's minimum wage rate or more;
 - v. If apprentice, he/she is to be paid not less than the apprentice's rate for the trade based on his/her year of apprenticeship; or
 - vi. If laborer, he/she is to do laborer's work only - not use any tool or tools of the trade –
 - vii. and not perform any part of a journeyman's work and is to be paid the laborer's minimum wage rate or more.
- f. Understands the requirements that each laborer or mechanic who performs work on the project in more than one classification and paid at the highest wage rate applicable to any of the work which he/she performs unless the following requirements are met:

- i. Accurate daily time records shall be maintained. These records must show the time worked in each classification and the rate of pay for each classification, and must be signed by the worker.
 - ii. The payroll shall show the hours worked in each classification and the wage rate paid for each classification.
 - iii. The payroll shall be signed by the workmen or a signed copy of the daily time record shall be attached thereto.
- g. Informed each worker of his/her hourly wages (not less than the minimum wage rate for his/her work as stated in the Wage Decision).
 - i. Time and a half for all work over 8 hours in any day or over 40 Hours in any work week (See Contract Work Hours Safety Standards Act).
 - ii. Fringe Benefits, if any (See Wage Decision for any required).
 - iii. Deductions from pay.
- h. Has informed each worker that he/she is subject to being interviewed on the job by the recipient, NJ EDA, NJ Department of Labor, or US Government Inspector, to confirm that his/her employer is complying with all labor requirements.
- i. Has informed each journeyman and each apprentice that a journeyman must be on the job at all times when an apprentice is working.

D. During Construction

- a. Each Employer:
 - i. Has not selected, assigned, paid different pay rates to, transferred, upgraded, demoted, laid off, nor dismissed any project worker because of race, color, religion, sex, or national origin.
 - ii. Has employed all registered apprentices referred to him/her through normal channels up to the ratio of apprentice to journeyman in each trade used by the employer.
 - iii. Will maintain basic employment records accessible to inspection by the recipient, Economic Development Authority, Department of Labor, or US Government Inspector.
 - iv. Is complying with all health and safety standards.
 - v. Has paid all workers weekly.
 - vi. Has submitted weekly payrolls, prepared on recommended Form WH-347 or comparable form.

Some employers place all project workers on Payroll Form WH-347. The recipient does not review those project workers listed on the payroll who perform work which

is descriptive of any of the following job titles which are exempt from labor requirements:

1. Project Superintendent
2. Project Engineer
3. Supervisory Foreman (Less than 20% of time as a working foreman)
4. Messenger
5. Clerical Workers
6. Timekeepers
7. Payroll Clerks
8. Bookkeepers

Any alternate payroll form should be cleared with EDA before employer starts work on the project. A project printout by computer, for example, is acceptable provided all data shown and required on the front and back of Payroll Form WH-347 is on, or included with, payroll submitted to recipient.

- Apprentice. If the worker is an apprentice, his/her registration number and year of apprenticeship is included in this column the first time the apprentice's name appears on the payroll.
- Split Classification. If the worker has performed more than one class of work during the work week, such as carpenter and laborer, the division of work will be shown on separate lines of the payroll.
- Accurate daily time records show the exact hours of work performed daily in each class of work, and are signed by the affected worker.
- Average Pay of Two Classes of Work Not Accepted. The employer shall not pay a "semi-journeyman" or semi-skilled laborer the average of journeyman's and laborer's rates. The actual hours each worker uses tools of trade (journeyman) and each hour he/she does not use tools of trade (laborer) must be recorded on the payroll.
- Helper. The work classification of "helper" is not accepted by the EDA, unless included in the Wage Decision issued by the Department of Labor for the project. Any employee listed as "helper" in absence of such classification in the Wage Decision must be paid the journeyman's rate for hours he/she uses tools of the trade.
- Apprentices. If a copy of the apprentice's registration certificate has not been Submitted to recipient by employer (through contractor), apprentice must be paid journeyman's rate.
- Weekly Payroll Review. Each employer has promptly reviewed the weekly payroll for compliance with all labor requirements (using this check list) and made necessary corrections.
- Each Lower-Tier Sub-contractor has submitted his weekly payroll or "no work" letter to the respective sub-contractor for the sub-contractor to have received within 3 calendar days from the last date of the work week. Each sub-contractor has received a payroll or "no work" letter from each and his/her own payroll, required necessary corrections, and submitted all of such payrolls to the contractor within 5 calendar days from the last date of the workweek.
- Contractor has received a payroll or "no work" letter from each Sub-contractor, monitored each including his/her own payroll, required necessary corrections, and collectively submitted them to the recipient within 7 work days of the last date of the respective work

week. **Must be original blue-ink signatures for submission to the EDA to be in compliance.**

E. After Project Completion

Each Employer will keep all weekly payrolls on the project for 3 years after the contractor's project completion date.

CHAPTER V

SECTION 3

(NJ SMALL BUSINESS LOAN PROGRAM NOT APPLICABLE)

1. What is Section 3?

Section 3 of the Housing and Urban Development Act of 1968, (12U.S.C.1701u)(Section3) and implementing regulations at 24 C.F.R. Part 135 states the purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD CDBG-DR financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low-and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses which provide economic opportunities to low-and very low-income persons.

2. Guidelines Regarding Section 3

The NJEDA's Section 3 guidelines require that new employment opportunities be extended to low-and very-low income residents of **the area where the project is being implemented**. In essence, Section 3 eligible residents are to be extended preference in new hiring situations which result from the infusion of HUD sourced funds.

These guidelines also require that designated Section 3 businesses be extended opportunities in contracting, sub-contracting, and servicing activities.

NOTE:

The NJEDA's Section 3 guidelines are specific to HUD CDBG Disaster Recovery funds only (no other HUD program are applicable here) and therefore incorporate site specific waivers based on project specific conditions that warrant special considerations. For example, the NJEDA may waive a specific target or requirement for a specific project based on its review of a project specific Section 3 Plan.

3. Numerical Targets

- Employment:
 - 30 percent of new full-time hires or three out of ten new hires annually, should be qualified Section 3 Residents
- Contracts:
 - 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work
 - Three percent of the total dollar amount of all other contracts, such as professional services
- Numerical targets are minimum target so be reached for compliance

- Recipient agencies are required to make best efforts to achieve these targets for employment and contracting
 - If a recipient fails to meet targets, they must adequately document all efforts made to meet those targets.

4. Section 3 Hiring

The Section 3 Hiring Policy is the essential component of any Section 3 Plan submitted to the NJEDA for approval by a contractor, subcontractor, and/or sub-recipient. The NJEDA recognizes the importance of making sure that low- and very-low income residents benefit from any and all HUD sourced projects built in their communities, particularly those who are recipients of government assistance for housing and businesses that provide economic opportunities to low-and very low income persons to achieve these objectives. Contractors, subcontractors, and/or sub-recipients are likewise expected by The NJEDA to demonstrate in their Section 3 Plans and through their subsequent implementation actions that Section 3 eligible residents are included in the hiring targets and are indeed beneficiaries of the plan's hiring guidelines and practices.

The following low- and very-low income resident hiring targets apply to all projects for which Section 3 guidelines are applicable:

Employment: Thirty percent (30%) of the aggregate number of new hires during a one year period of the project. (Example: A construction contractor hires 10 new workers. Three of the new workers should be Section 3 eligible persons.)

Where possible, priority consideration will be given to (in the following order):

Highest Priority: Low- and very-low income residents certified as Section 3 eligible **residing in the neighborhood where the project is located.**

Second Priority: Participants of public and social service programs funded by HUD, such as the HUD Youthbuild programs.

Third Priority: Other low- and very-low income residents throughout the State of New Jersey certified as Section 3 eligible.

All employment opportunities resulting from Section 3 eligible project awards must be published and posted in order to make Section 3 residents aware of the opportunities. Under The NJEDA's Section 3 Hiring Policy funded contractors, subcontractors, and sub-recipients must:

1. Conduct employment outreach to a number of community based agencies for all new hires.
2. Accept and give preferential employment consideration to referred Section 3 eligible residents.

3. Provide appropriate employment outreach signage at the project site and throughout the project area to inform low- and very low-income neighborhood residents of employment opportunities.
4. Distribute employment outreach flyers throughout the project community and with community based organizations regarding employment opportunities.

Eligibility

A section 3 resident is:

1. a public housing resident; or
2. a low- or very low-income person residing in the metropolitan area or Non-metropolitan County where the Section 3 covered assistance is expended.

Individuals interested in applying for Section 3 status with The NJEDA must meet the following criteria:

- a) Live in the state of New Jersey
- b) 80% or below the median income

Each application must include each of the following documentation:

1. Section 3 Employee and Trainee Data Form
2. Proof of residency (lease in a HUD or other federally assisted program)
3. Proof of Income to be included with Section 3 Employee Household Income Certification Form 5 (one of the following is acceptable)
4. Proof of public assistance, e.g. Section 8 recipients, etc.
5. Proof of participation in a federally assisted program such as job training programs, etc.
6. Proof of participation in a state or local assistance program, or other program that assists low- or very-low income persons
7. Lease in a HUD or other federally assisted program

Low- and very-low-household income limits are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the median income for each locality by household size or the number of people residing in one house however, for **Sandy HUD's Section 3 Waiver allows grantees to document the low/moderate national objective based on the income of an employee (rather than the employee's family).**

5. Section 3 Business Opportunity Policy

The Section 3 Business Opportunity Policy is another essential component of any Section 3 Plan. The NJEDA is committed to making sure that designated Section 3 eligible businesses derive economic benefit from HUD disaster recovery funding. Contractors, subcontractors, and/or sub-recipients are expected to demonstrate in their Section 3 Plans and through their subsequent implementation actions that Section 3 certified businesses are included in their contracting targets and are indeed economic beneficiaries of the plan's business and procurement guidelines and practices. Under the Section 3 policy, Section 3 eligible businesses will be given priority in contracting for appropriate work.

6. Contracting and Subcontracting Opportunities

The NJEDA will work to establish Section 3 subcontracting and employment targets on an annual basis, as well as on a project-by-project basis. The NJEDA will review and approve a contractor's Section 3 Plan and ensure compliance with the project targets **before a recommendation for award of contract can be made to the NJEDA Commission.** The current Section 3 contracting and subcontracting targets are as follows:

1. A target of 10 percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, construction, and other public construction with federal funds; and
2. A target of three percent (3%) of the total dollar amount of non-construction (e.g. architects) Section 3 covered contracts to eligible Section 3 businesses.

Eligibility

Section 3 business concerns are businesses that can provide evidence that they meet one of the following criteria:

- a) 51 percent or more owned by Section 3 residents; or
- b) At least 30 percent of its full time employees include persons that are currently Section 3 residents, or were Section 3 residents within three years of the date of first hire*; or
- c) Provides evidence, as required, of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to business concerns that meet one of the first two qualifications above.

7. Each Applicant Must Attach The Following Documentation To Their Application, For Businesses Claiming Status As A Section 3 Resident-Owned Enterprise, Submit One Of The Following:

- Copy of a public or subsidized housing lease; or
- Proof of public assistance; or

- Proof of unemployment benefits or other government subsidies

8. Businesses

For businesses claiming Section 3 status, claiming at least 30% of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:

- List of all current full-time employee's status
- List of employees claiming Section 3 status
- Section 3 application or proof of Section 3 certification from employees claiming status
- PHA/IHA Residential Lease less than 3 years from day of employment
- Other evidence of Section 3 status less than 3 years from date of employment

For businesses claiming Section 3 status by subcontracting 25% of the dollar awarded for HUD Section 3 eligible projects to qualified Section 3 business:

- List of subcontracted Section 3 business(es) and subcontract amount for the fiscal year, or from the start of the project, applying for certification (Jan – Dec)
- List of all contracts received in the fiscal year, or from the start of the project, applying for certification (Jan – Dec)
- If unable to provide copies of contracts, then documentation of plan to subcontract all future awards to Section 3 certified companies

**In order to maintain Section 3 status under this section, all applicants must propose 25% participation on all future bid submittals for HUD Section 3 eligible projects. This requirement may be waived if a waiver request has been approved or a HUD Section 3 goal was not set on the project.*

For business entity as applicable

- Copy of Articles of Incorporation
- Certificate of Good Standing
- Assumed Business Name Certificate
- Partnership Agreement
- List of owners/stockholders and % ownership of each
- Corporation Annual Report

- Latest Board minutes appointing officers or statement explaining the organization does not have Board minutes
- Organization chart with names and titles and brief function statement
- Additional documentation as requested

Contractors, Subcontractors, and/or Sub-recipients Contractual Obligations

Under the Section 3 Business Opportunity Policy, funded contractors, subcontractors, and/or sub-recipients are obligated to:

1. Conduct subcontractor outreach to Section 3 eligible businesses for sub-contracting and business opportunities.
2. Accept and give priority business engagement consideration to Section 3 businesses.
3. Provide appropriate subcontractor outreach signage at the project site and throughout the project area to inform Section 3 eligible businesses of business opportunities.
4. Document outreach efforts related to Section 3 eligible businesses. **(SEE EXHIBIT 3-I SAMPLE FORMS AND CERTIFICATONS –SECTION 3 PLAN)**
5. Maintain proper documentation of utilization of Section 3 eligible businesses.

9. Requirements Of Bidders - Greatest Extent Feasible Efforts

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very low-income persons, including permanent employment and long-term jobs.

Recipients and contractors are encouraged to have Section 3 residents make up at least 30 percent of their permanent, full-time staff.

A Section 3 resident who has been employed for 3 years may no longer be counted towards meeting the 30 percent requirement. This encourages recipients to continue hiring Section 3 residents when employment opportunities are available.

To demonstrate sufficient —greatest extent feasible efforts to meet the HUD Section 3 contract targets, a bidder shall document the steps it has taken to obtain HUD Section 3 participation.

If the NJEDA approves a Section 3 Plan and decides to move forward with an actual commitment of funds for the project, then the sub-recipient is expected to sign a contract with the NJEDA which incorporates the Section 3 Plan as one of the essential components which will be monitored by the NJEDA. **Failure to submit a Section 3 Plan with bid will be considered non-compliant and invalid. (REVISED 6/10/15)**

Once there is a contractual agreement with the NJEDA, the subrecipient or is obligated to make available all documentation necessary to enable NJEDA staff to conduct compliance reviews, which

consist of analysis and evaluation of compliance with the approved Section 3 Plan. Where noncompliance is found, the NJEDA will issue immediate notification to the recipient of the nature of the deficiency and issue notices for corrective actions. The subrecipient or is expected, under the contractual obligation with the NJEDA, to adhere to implementing the approved Section 3 Plan. The subrecipient and their subcontractors are subject to compliance reviews by HUD, NJEDA, and other Federal and State agencies. The sub-recipients or and their subcontractors are required to maintain records in a manner where they will be readily available to HUD and NJEDA staff, and other Federal and State agencies.

10. NJEDA Compliance

The NJEDA Section 3 Coordinator will conduct regular compliance reviews, which consist of comprehensive analysis and evaluation of the contractor, subcontractor, applicant and/or sub-recipient documentation of meeting Section 3 targets. Subcontractors are subject to the same Section 3 responsibilities as the prime contractor or sub-recipient or. When noncompliance is found, the NJEDA will notify the responsible party of the deficiency and recommendations for corrective actions. If a contractor's or sub-recipient's subcontractors are found to be noncompliant, notification will be sent to the contractor and sub-recipient with recommendations. It is the contractor's or sub-recipient's responsibility to ensure their subcontractors implement recommendations for corrective actions. On complaints sent to HUD, the Fair Housing Staff will conduct an evaluation and make recommendations for corrective actions.

Reports

The NJEDA requires monthly reports to be submitted to the NJEDA at the time of bid and on a monthly basis. Monthly reports are due by **the 15th business day of each month** until the project has ended. The following reports should be submitted regardless if the work has been completed for that month or not:

- Certified Payroll Reports (US DOL or NJ DOL CPR Forms are acceptable)
Only original blue ink forms with signatures are acceptable for submission to the NJEDA
- Appendix B – Section 3 Contractors Business Utilization Form 11
- Appendix C – Section 3 New Hires Compliance Form 12
- See Sandy guidelines for additional reporting requirement pertaining to Affirmative Action and Small, Women, Minority, and Veteran owned business enterprises.

Annual Report

The NJEDA is required to submit an annual Section 3 report to NJDCA and HUD as part of its Consolidated Annual Performance and Evaluation Report (CAPER). All reports shall be submitted from the NJEDA on HUD Form 60002 to the New Jersey Department of Community Affairs.

The NJEDA will receive and maintain records to document compliance with the Section 3 program objectives. At a minimum, records will include specific information and documentation to

demonstrate whether the numerical targets were met and that the recipient and contractors, subcontractors, and/or sub-recipients carried out their responsibilities.

11. Record Maintenance And Documentation

All projects which are subject to Section 3 guidelines are required to maintain comprehensive documentation of their Section 3 outreach efforts and implementation activities. There should be clearly maintained Section 3 documentation files available to be produced to and reviewed by NJEDA and/or HUD officials, and any other applicable Federal or state agencies.

CHAPTER VI

EQUAL EMPLOYMENT OPPORTUNITY SUMMARY

1. Purpose

To outline the policies and procedures for the New Jersey Economic Development Authority and contractors engaging in construction on SANDY federally funded projects, to summarize compliance with a range of Equal Employment Opportunity (EEO) requirements, including but not limited to:

- The affordance of equal opportunities to all persons;
- The prohibition against person being excluded or denied program benefits on the basis of race, color, religion, sex, national origin, age or disability
- The inclusion of and outreach to small, minority, women and veteran-owned businesses; and
- Section 3 resident and business employment, training, and contracting opportunities (applicable to NJEDA’s Neighborhood Community Revitalization (NCR) programs, but not applicable to NJEDA’s Loans to Small Businesses program).

For more detailed information refer to Exhibit 5-2, “CDBG COMPLIANCE PROVISIONS for Construction Contractors”

2. NJDCA and NJEDA EEO Policy Statement – SANDY

In general, no person shall on the grounds of race, color, national origin, religion or sex be excluded, denied benefits or subjected to discrimination under any program funded in whole or in part by HUD funds. During program design and project implementation, the sub-grantee (i.e. NJEDA) must take measures to ensure non-discriminatory treatment, outreach and access to program resources.

In some cases certain CPD program contain waivers and alternative requirements, relevant statutory provisions for grants and loans provided under the Federal Notice issued for that program. In order to meet the requirements for Community Development Block Grant Disaster (CDBG-DR) Program (Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 commonly referred to the “Stafford Act”) as well as the Disaster Relief Appropriations Act of 2013 (78 FR 14329 – published March 5, 2013 and the clarifying guidance published on April 19, 2013) the following section has been added to describe any waivers or alternate requirements for this crosscutting element.

Note that wherever a conflict occurs between the crosscutting requirements and the special requirements as noted in the Stafford Act and the Disaster Relief Appropriations Act of 2013, the latter shall take precedence.

3. Disaster Recovery Waivers or Alternate Requirements

See State of New Jersey – Department of Community Affairs Section 3 Policy Memo (Number 2.10.22) amended May 2014, page 3 of 50 which states:

“DCA will apply Section 3 criteria and standards to “covered activities” within the following NJEDA programs.... Neighborhood and Community Revitalization Program ...”

“Section 3 is not implicated by the remaining CDBG programs detailed in the Action Plan.”

NJEDA programs that are not subject to Section 3 criteria and standards include the Grants/Recoverable Loans to Small Businesses, Direct Loans to Small Businesses and Tourism Marketing programs.

4. Applicable Laws and Requirements

The following list of federal laws and executive orders that apply to all CDBG-DR funded contracts. Copies of these laws and their implementing regulations can be found online at:

<http://www.hudclips.org>.

Some requirements such as Section 3 (where applicable) and the requirement to utilize good faith efforts to utilize minority, women and veteran-owned businesses are covered in other Chapters within this manual.

5. Equal Opportunity

A. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d.)

This Act states that no person may be excluded from participation in, denied benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance on the bases of race, color, or national origin.

Regulation citation: 24 CFR Part 1.

B. Title VIII of the Civil Rights Act of 1968, as amended

This Act prohibits discrimination in the sale or rental of units in the private housing market against any person on the basis of race, color, religion, sex, national origin, familial status or handicap.

Regulation citation: 24 CFR Parts: 105,108,109,110 and 115; Part 200 subpart M.

C. Section 109 of the Housing and Urban Development Act of 1974, as amended

This Act requires that no person be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded under the CDBG Program on the basis of race, color, age, disability, religion, national origin or sex.

Regulation citation: 24 CFR 570.602

D. Age Discrimination Act of 1975, as amended

This Act states that programs receiving federal assistance may not discriminate on the basis of age, unless an age distinction is necessary to accomplish the objective of the program.

Regulation citation: 45 CFR Part 91

E. Section 504 of the Rehabilitation Act of 1973, as amended

This Act states that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in, the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance.

Regulation citation: 24 CFR Part 8. Section 104 of the Housing and Community Development Act of 1974, as amended.

6. Handicapped Accessibility

A. Section 504 of the Rehabilitation Act of 1973, as amended

This Act states that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in, the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance.

Regulation citation: 24 CFR Part 8.

B. Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157)

This Act requires that certain federally funded buildings or facilities be designed, constructed or altered to ensure accessibility to, and use by, physically handicapped persons. Buildings or facilities allocated or reallocated GLO-DR funds after December 11, 1995, that meet the definition of “residential structure” (as defined in 24 CFR 40.2) or the definition of “building” [as defined in 41 CFR 101-19.602(a)] are subject to the Architectural Barriers Act and must comply with the Uniform Federal Accessibility Standards.

Regulation citation: Appendix A to 24 CFR Part 40 for “residential structures” and Appendix A to 41 CFR Part 101-19 for “general buildings”.

C. Americans with Disabilities Act (“ADA”)

This Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The ADA also states that discrimination includes the failure to design and construct facilities (built for occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.

Regulation citation: 42 U.S.C. 12131; 47 U.S.C. 155,201,218 and 225. Title II of the ADA, 28 CFR 102-104, extends the prohibitions of discrimination on the basis of disability established by Section 504 of the Rehabilitation Act of 1973 to include all activities of state and local governments whether or not they receive federal funds.

7. Employment Contracting

A. Equal Employment Opportunity, Executive Order 11246, as amended

This Executive Order prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin. Provisions to effectuate this prohibition must be included in all construction contracts exceeding \$10,000.

Regulation citation: 41 CFR Part 60

B. Section 3 of the Housing and Urban Development Act of 1968, as amended

This Section provides for training and employment opportunities, to the extent possible, to lower-income residents of the project area and to provide contracts associated with CDBG-DR funded projects to businesses located in the project area; or, to businesses owned, in substantial part, by residents of the project area.

For economic revitalization programs administered by the New Jersey Economic Development Authority, the Section 3 requirements are applicable to the Neighborhood Community Revitalization (NCR) grants ONLY.

Section 3 requirement are not applicable to the Loans to Small Businesses (SBLs) pursuant to a New Jersey Department of Community Affairs policy clarification memo issued in May of 2014.

Regulation citation: 24 CFR Part 135

NJDCA Policy clarification: State of NJ – Department of Community Affairs Section 3 Policy Memo Number 2.10.22, amended May 2014, page 3 of 5 specifying which NJEDA programs are subject to or not subject to Section 3 criteria and standards.

C. Section 109 of the Housing and Urban Development Act of 1974, as amended.

This Act requires that no person be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded under the CDBG-DR programs on the basis of race, color, age, disability, religion, national origin or sex.

Regulation citation: 24 CFR 570.602

D. Section 504 of the Rehabilitation Act of 1973, as amended

This Act states that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance.

Regulation citation: 24 CFR Part 8.

8. Excessive Force

A. 24 CFR Part 91, Section 225 (b) 5

The Consolidated Plan for Community Planning and Development Programs require that in order for a state or local government to receive CDBG-DR funds, it must certify that it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engage in non-violent civil rights demonstrations¹. In addition, and in the case where there is no local police department, the local government also must certify that it has adopted and is enforcing a policy against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

9. Fair Housing (not applicable to NJEDA economic revitalization programs)

10. Displacement / Relocation

A. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d)

This Act states that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color, or national origin.

Regulation citation: 24 CFR Part 1.

B. Section 109 of the Housing and Urban Development Act of 1974, as amended

This Act requires that no person be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded under the CDBG-DR program on the basis of race, color, age, disability, religion, national origin or sex.

Regulation citation: 24 CFR 570.602

C. Title VIII of The Civil Rights Act of 1968, as amended

This Act prohibits discrimination in the sale or rental of units in the private housing market against any person on the basis of race, color, religion, sex, national origin, familial status or handicap.

Regulation citation: 24 CFR Parts: 105, 108, 109, 110 and 115; Part 200 Subpart M. Section 104 of the Housing and Community Development Act of 1974, as amended.

11. State of New Jersey Civil Rights Requirements – Overview

Various chapters of this manual provide references to other civil rights and equal employment opportunity requirements of the CDBG-DR specific to State of New Jersey.

Instructions for complying with requirements to include small, women, minority and veteran owned businesses enterprises in the contract bidding process are directed to the specific chapter dedicated to this requirement.

12. Federal Minority & Women Business Enterprise Requirements

CDBG-DR Grantees and subrecipients are required to take all necessary steps to assure that minority owned firms and women's business enterprises are used to perform CDBG funded activities whenever possible. Federal Executive Orders 11625, 12432, 12138 and regulations contained in 24 CFR 85.36(e) mandate that such affirmative efforts be made.

A. Required Affirmative Contracting Efforts

- Placing qualified minority and women owned business enterprises on a solicitation list for CDBG-DR contracts;
- Assuring that these firms are solicited whenever there are potential sources;
- Dividing total requirements, whenever feasible, into smaller units, to encourage participation of minority and women owned firms;
- Establishing delivery schedules, whenever possible, that encourage minority and women owned businesses to participate;

- Requiring the prime contractor, if sub-contracts are to be let out, to take the affirmative steps listed here.

STATE OF NEW JERSEY SMALL & VETERAN OWNED BUSINESS ENTERPRISE REQUIREMENTS

B. Small, Women, Minority and Veteran Owned Businesses

- Documentation of all efforts made to inform and contract with small, women, minority and veteran-owned businesses (e.g. copy of advertisements, list of small, women, minority and veteran –owned businesses)

13. Equal Employment Requirements Applicable to Contractors

CDBG-DR contractors are required to comply with Federal Executive Orders which mandate that “no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts.” Further, contractors and subcontractor are required to “take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment and recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.”

Regulation citation: Executive Orders 11246 and 12086.

CHAPTER VII

CONSTRUCTION MANAGEMENT

1. Introduction

Throughout the construction period, the Subrecipient, the Project Engineer (or Architect) (if any), and the Contractor(s) have certain responsibilities. These responsibilities should be clearly defined in the contracts between the Subrecipients and the Engineer/Architect, and the Contractor.

A. Responsibilities of the Subrecipient- as the “Owner” of the project, the Subrecipient has specific responsibilities to the Project Engineer, the Contractor, and the NJEDA, and possibly state or federal funding agencies that may be involved in funding the project.

a. Subrecipients responsibilities to the Contractor:

- i. The Subrecipient is responsible for providing all lands, easements, and right-of-way that are designated as part of the project for use of the Contractor.
- ii. The Subrecipient must provide the Contractor with any engineering surveys performed to establish construction reference points that the Project Engineer considers necessary to proceed with the project. The Subrecipient should also make available to the Contractor copies of reports of site explorations and subsurface conditions that were used by the engineer in preparing the project plans and specifications.
- iii. Unless otherwise specified, the costs of all inspections, tests, and or approvals required by the laws or regulations must be paid for by the Subrecipient.

b. Subrecipients responsibilities to the NJEDA: The Subrecipients responsibilities are clearly defined in the Subrecipient Agreement executed at time of CDBG-DR funding award.

B. Responsibilities of the Project Engineer or Owner’s Representative - the Project Engineer, if hired, will be the Subrecipients representative during the construction period. The scope of the Project Engineer’s authority should be defined in the contract documents and should not be extended without written agreement between the Subrecipient and the Project Engineer.

a. The Project Engineer or Owner’s Representative will visit the project at appropriate intervals during the various stages of the construction to observe the progress and quality of the work and to generally determine that work is proceeding in accordance with the Contract Documents. Presence on the job by the Project Engineer is intended to provide a greater degree of confidence in the suitability of construction, and to allow an accurate determination of the completed work for purposes of payment. The Project Engineer should keep the Subrecipient informed of work progress and will help protect the Subrecipient against defects and work deficiencies. However, the Project Engineer is not responsible for the Contractor's:

- means, methods, techniques or procedures of construction,
- safety precautions and programs, or

- failure to perform or furnish the work specified in the Contract Documents.

Also, the Project Engineer is not responsible for the acts or omissions of the Contractor or any Subcontractor, supplier or any other person or organization performing or furnishing any of the work. However, even though the Project Engineer is not directly accountable for the responsibilities of the Contractor, the Project Engineer is the Subrecipients's "eyes and ears." The Project Engineer should keep the Subrecipient informed of anything that does not appear to be proper or proceeding as specified so that the Subrecipient can take action if necessary.

- b. The Project Engineer serves as the initial interpreter of requirements of the Contract Documents and judge of the acceptability of the project work. Requests for Clarification or Interpretation of the contract drawings or specifications are often referred to as RFI's or Requests For Information. An RFI is a written request from the Contractor to the Project Engineer and will be answered in writing by the Project Engineer. RFI's shall be maintained by the Project Engineer in the Project File.
- c. All claims, disputes or other matters relating to such interpretation and/or acceptability must initially be referred to the Project Engineer in writing. This written requirement also applies to claims with respect to changes in the contract price or contract time. The Project Engineer will render a formal written clarification, interpretation or decision within a reasonable time without showing any partiality to either the Subrecipient or the Contractor. The Project Engineer may issue such written clarifications or interpretations of the requirements of the Contract Documents as may be necessary and which must be consistent with or reasonably inferable from the overall intent of the Contract Documents.
- d. The Project Engineer may authorize minor variations in the work provided they do not involve an adjustment in the contract price or contract time and are consistent with the overall intent of the Contract Documents. Such variations may be accomplished by "Field Orders" and will be binding on the Subrecipient and the Contractor. The Contractor may claim that a Field Order justifies an increase in the contract price or an extension of the contract time. The Project Engineer should first obtain approval from the Subrecipient if the issuance of a Field Order or Work Directive will result in a change in either the contract price or contract time. If there is a change in either the contract time or contract price, a written Change Order must be completed. Refer to the Change Order section of this chapter for further instructions on Change Orders.
- e. The Project Engineer has the authority to disapprove or reject work that he or she believes to be defective. The Project Engineer also has the authority to require special inspection or testing of the work even when the work is fabricated, installed or completed.
- f. With reasonable promptness, the Project Engineer will review and approve shop drawings and samples submitted by the Contractor. Such review and approval is only for conformance with the project design concept and compliance with the information given in the Contract Documents. The Project Engineer may require the Contractor to submit corrections to shop drawings or samples.
- g. The Project Engineer will accept and review the Contractor's Applications for Progress Payment, AIA G702. After reviewing the application, the Project

Engineer will either recommend payment and present the application to the Subrecipient, or return the application to the Contractor stating in writing why the application is being refused. A recommendation for payment will be based on the Project Engineer's on-site observations of the work in progress and accompanying information that the work has progressed to the point indicated. Additional instruction on Applications for Progress Payment shall be found later in this chapter.

- h. The Project Engineer is generally responsible for checking the actual quantities and classifications of unit price work performed by the Contractor. Following a review of his or her preliminary decisions with the Contractor, the Project Engineer will provide a written decision (as an Application for Payment or otherwise). Such written decisions are binding on the Subrecipient and the Contractor unless either party delivers a written notice to appeal such decision to all parties.
- i. Upon written notice from the Contractor that the entire project (or an agreed portion) is complete, the Project Engineer must make a final inspection with the Subrecipient and the Contractor. If the Project Engineer determines that the work is incomplete or defective, he or she must so notify the Contractor in writing.
- j. When the Project Engineer is satisfied the work is complete, he or she will accept and review the Contractor's Application for Final Payment. The Project Engineer must decide whether or not to make final acceptance within 10 days after receiving the Contractor's Application for Final Payment. Final acceptance means that the Project Engineer has certified that the "project" been constructed in accordance with the terms and conditions of the contract documents. The Project Engineer must give written notice to the Subrecipient and the Contractor that the work is acceptable. Within 30 days after final acceptance by the Project Engineer, unless otherwise specified in the contract, the Subrecipient must make the final payment of the contract price specified in the contract for all completed work to the Contractor.

C. Responsibilities of the Contractor- It is the responsibility of the Contractor to complete the project in accordance with the Plans and Specifications and to comply with applicable safety, labor, and environmental protection laws and regulations. The scope of the Contractor's work as well as responsibilities should be defined in the contract documents and should not be extended without written agreement between the Subrecipient and the Contractor.

- a. **Subcontractors-** The Contractor is fully responsible for all acts and omissions of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the work under a direct or indirect contract with the Contractor.
- b. **Project (Construction) Superintendent-** During the project, it is best practice that the Contractor keep a competent project superintendent (also frequently called the "general superintendent") on the site who will supervise and direct the construction work required in the Contract Documents. The Project Engineer communicates with the Contractor through the Contractor's project superintendent. Official communications regarding the work should only be made to the Contractor's project superintendent and not laborers or worker on the project, as they do not have the authority to direct other members of the Contractor's work force.

- c. **Site Conditions-** During the progress of the work, the Contractor must keep the project site free from waste materials, rubbish and other debris generated by the work. The Contractor must remove all waste materials, equipment, surplus materials, tools and appliances from the premises at the completion of the project and leave the site clean and ready for occupancy. The Contractor must restore any property to its original condition that is not designated for alteration.
- d. **Record Keeping-** The Contractor must maintain at the project site at least one record copy of all drawings, specifications, addenda, written amendments, change orders, work directive changes, field orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents are to be available to the Project Engineer and NJEDA personnel for reference.

2. Pre-Construction Meeting

The NJEDA pre-construction meeting shall be held once the construction contract is executed and prior to commencement of work. During the pre-construction meeting, project responsibilities are defined, key players are introduced and the Contractor's proposed schedule is presented. This meeting is also intended to acquaint the Contractor with Federal and New Jersey requirements such as the Labor Standards Provisions, Equal Employment Opportunity Requirements, and Section 3. Attendance is required by the Subrecipient and/or their representative (Project A/E) and the prime Contractor. This meeting will be facilitated by NJEDA's Senior Construction Manager. The Subrecipient and prime Contractor should include all Subcontractors to ensure that they are aware that they must comply with federal labor standards and civil rights provisions.

The meeting provides the participants with instructions for activities required for the use of CDBG-DR funds during construction. These instructions will include a review of:

- the project schedule (see section below)
- the payment process
- change orders
- site visits/project meetings
- construction close-out

Additional items as required by the Subrecipient or the Project Engineer may be included in this meeting. Minutes of the pre-construction meeting will be recorded to document the subject(s) discussed and placed in the file.

3. Notice to Proceed

Upon execution of the construction contract and holding of the pre-construction meeting, the Subrecipient may then provide the prime contractor(s) with a written **Notice to Proceed**. This notice established the construction starting date and the estimated date of completion. No physical work being paid for with CDBG-DR funds shall commence prior to issuance of the Notice to Proceed. A copy of the Notice to Proceed must also be sent to the NJEDA, at the time the notice is sent to the contractor.

4. Contractor's Schedule

The Subrecipient will obtain a construction project schedule of the proposed activities from the prime Contractor at the start of construction. The schedule may be in the form of a progress chart of suitable scale to indicate appropriately the % of work scheduled for completion by any given date during the period. An update is required, at a minimum, when work falls more than 10% behind schedule. A current Construction Progress Schedule shall be submitted with the monthly Application for Payment.

5. Progress Payments

The Contractor shall submit on a monthly basis to the Subrecipient, a payment requisition. The AIA G702, "Application and Certificate for Payment", and the AIA G703, "Continuation sheet for G702", are the approved forms for use. The Construction Contract should set forth the time allowed between the submission of an Application for Payment and the time the Contractor is paid. Typically, the Contractor payment is due within 30 days of receipt and upon the Subrecipient's approval (based on the Project Engineer's recommendations and execution) of the Application for Payment, unless a longer period for payment has been agreed to, or claims have been made against the Subrecipient due to the Contractor's performance, or there are other items entitling the Subrecipient to offsets against the amount recommended.

The Subrecipient shall have in its possession all partial Release of Liens (AIA G706A), as required, for the general contractor, all subcontractors, suppliers, and others who may have lien rights against the Subrecipient's property. The Subrecipient shall provide copies of all lien releases to the NJEDA with each Progress Payment request. (revised 6/10/15)

The NJ Economic Development Authority (the "Authority") will pay and/or reimburse the Subrecipient for eligible Costs of the project up to a maximum as specified in the respective Subrecipient Agreement. The Grant Funds will be disbursed based on satisfactory review of payment requisitions, invoices, bills, receipts, **lien releases**, and payroll records submitted to the Authority's Office of Recovery, Closing and Disbursement. To the extent practicable, Grant Funds will be disbursed on a pro rata basis with other funding provided to the Project. Subrecipient shall promptly pay appropriate vendors and provide satisfactory documentation to the Authority evidencing payment to said vendors ("Payment Confirmation"). The Authority will not process any future Request for Disbursement unless the Payment Confirmation is received by the Authority and is satisfactory in its sole discretion. **(revised 6/10/15)**

For paid Contractor or A/E invoices, an ACH transfer to the Subrecipient will be issued if the invoice has been paid in full and the following has been submitted and approved by the Authority: (i) receipt of a statement, bill or invoice marked paid, showing completed work for the Project, together with proof of payment; and (ii) a Application and Certification for Payment, AIA G702, signed and sealed by the Subrecipient's Project A/E stating the amount to be paid.

6. SWMVBE Compliance Reporting

The general contractor or construction manager is required to complete and submit the **NJEDA Office of Recovery Sandy, "SWMVBE MONTHLY CONTRACT AND SUBCONTRACT ACTIVITY REPORT"** as an attachment to each requisition submitted to NJEDA requesting disbursement of CDBG/DR funds. (See attached form as Exhibit 6-1).

The Office of Small Business Assistance within the New Jersey Department of Treasury has specific oversight of the small business set-aside programs. The Office of Minority Business Enterprise with the New Jersey Department of Treasury has specific oversight of the minority and women program.

7. Retainage

“Retainage” is an amount of money, usually ten (10) percent of the total amount due to the Contractor that is held by the Subrecipient as additional insurance that the Contractor will properly complete the construction work. The retainage may not exceed 10% if the contractor is performing by the terms of the contract. The retainage is held pending the final inspection and acceptance of work. The actual amounts retained may vary, depending on the total amount of the contract, progress of construction, and other specific instructions in the contract.

8. Construction Monitoring and Progress Meetings

The project must be monitored throughout the construction period to ensure that the Contractor is performing in accordance with the technical specifications and that compliance is maintained with all federal, state, and local standards and the terms of the contract. To be an effective tool for avoiding problems and improving performance, monitoring must involve an **on-going process of planning, implementation, communication, and follow-up.**

- A. Monitoring Frequency-** Monitoring visits will be performed by NJEDA’s Construction Officer to review construction related items; and by NJEDA’s EEO/Contract Administrator for review of compliance items. Visits frequency by the State Officers shall depend on the project size and duration.

The Subrecipient’s Project Engineer shall also schedule monitoring visits at appropriate intervals during the various stages of the construction to observe the progress and quality of the work and to generally determine that work is proceeding in accordance with the Contract Documents.

B. The Monitoring Visit

There are five basic steps that may occur in the monitoring visit. Any step may be adjusted or omitted if deemed appropriate by the NJEDA Construction Officer.

1. Notification
 2. Construction Progress Meeting
 3. Documentation, Data Acquisition and Analysis
 4. Exit Conference
 5. Follow-up Monitoring Letter
1. **Notification:** The NJEDA Officer will reach out to the Subrecipient and /or Project Engineer with a telephone call to explain the purpose of the monitoring and to specify date(s) for the visit(s). A follow-up email/meeting invitation will sent prior to the scheduled visit to:
- confirm the date and the scope of the monitoring;
 - provide a description of the information you want to review during your visit; and

- specify the expected duration of the monitoring, which of your staff will be involved, what office space you require, and what members of the Subrecipient's staff you need to talk with.
2. **Construction Progress Meeting:** An on-site meeting with the Subrecipient's and its representative (project A/E) and appropriate general Contractor staff will be conducted prior to beginning the on-site construction review. Items to be reviewed include Contractor requisition for payment, change orders, progress schedule, corrective action items identified during previous visits, as well as any other concerns from involved parties.
 3. **Documentation, Data Acquisition and Analysis:** A clear written record of the steps followed and the information reviewed during the visit will be kept. Any conversations held with Subrecipient staff (or their representatives) will be documented. A thorough review of Contractor requisition for payment will be conducted to verify all work items requesting payment. Photo documentation is required. Work in place **must** match design document submittals.
 4. **Exit Conference:** At the end of the site visit, the monitoring Officer will meet again with key representatives of the Subrecipient organization to present the tentative conclusions from the monitoring. This exit conference has four objectives:
 - to present preliminary results of the monitoring visit;
 - to provide an opportunity for the Subrecipient to correct any misconceptions or misunderstandings on Officer's part;
 - to secure additional information from Subrecipient staff to clarify or support their position; and
 - for any deficiency that the Subrecipient agrees with, to provide an opportunity for Subrecipient staff to report on steps they are already taking to correct the matter.

Again, careful notes on the exit conference will be taken in order to document what the Officer told the Subrecipient and whether the Subrecipient agreed with the tentative findings. At the end of the conference, there should be a clear understanding of the areas of agreement and disagreement about the monitoring results.

5. **Follow-up Monitoring Letter:** The monitoring letter is used to create a permanent written record of what was found during the monitoring review. It will include meeting documentation and any relevant site documentation.

The monitoring letter will identify fully every finding and concern. A **finding** is issued for non-compliance with the rules and regulations of the CDBG program. For each finding, specific **corrective actions** the Subrecipient must take will be identified.

Concerns are presented in the monitoring letter as instances where the deficiency is not a finding, or where non-compliance may occur in the future because of weaknesses in the Subrecipient's operations. For each concern, **specific recommendations** for improvement will be included.

Deadlines will be set in the monitoring letter for:

- providing a **written response** to the monitoring letter that describes how the Subrecipient will resolve any finding(s); and

- **correcting each deficiency** identified in the letter.

9. Change Orders

As previously stated in this chapter, the Project Engineer may authorize minor variations in the work provided they do not involve an adjustment in the contract price or contract time and are consistent with the overall intent of the Contract Documents. The approved form for use is the AIA G701.

The Subrecipient is required to execute Change Orders (Written Amendments to the contract with the Contractor), which cover the following:

- Changes in work ordered by the Subrecipient;
- Changes in work required because of acceptance or correction of defective work;
- Changes in work agreed to by the Subrecipient and Contractor;
- Changes in the contract price or time agreed to by the parties; or
- Those changes in the contract price or schedule that incorporates certain written decisions rendered by the Project Engineer.

Change Orders that affects the original approved scope of work, increases the contract price, or causes changes in the construction schedule **MUST** be approved by the NJEDA prior to the execution of the change order or completion of the work proposed.

10. Record Drawings

“Record Drawings”, created from the “As-Built” drawings, are drawings that represent the constructed project. These drawing indicate a record of items observed during construction of the project. Underground structures or utilities encountered during construction that required a slight change in grade or alignment should be recorded daily on the project record drawings. Because of the importance of these drawings, the Project Engineer usually requires that the Contractor maintain independent sets of As-Built Drawings. These sets of drawings should be compiled into a final set of Record Drawings that are given to the Subrecipient as a permanent record of the improvements made under this project. Subrecipient officials should take care of their Record Drawings so that they will be accessible in the years to come should the need arise. A final set of Record Drawings should also be provided to the NJEDA.

APPENDIX 6

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Exhibit 6-1: [SWMVBE Monthly Contract and Subcontract Activity Report](#)

Exhibit 6-1 NJEDA SANDY SWMVBE MONTHLY REPORT - NJEDA SWMVBE Form 2

New Jersey Department of Community Affairs
Sandy Recovery Unit
Contract and Subcontract Activity Report

Grantee/Borrower:

Contact
Person/Contact
Phone No.

Reporting Period:

Address:

Project:

Invoice Date:

Original Contract Amount: \$0.00

Invoice No.

Current Committed Contract Amount: \$0.00

Net Amount Billed to Date: \$0.00

Current Invoice Net Amount: \$0.00

Name of Contractor	Amount of Contract	Type of Trade Code*	Contractor Business Racial/Ethnic Code**	Business Enterprise Code***	Contractor Identification No. (EIN)	Section 3 (Y or N)	Previous amount billed (less retainage) to SBE/MBE/WBE	Current amount billed (less retainage) to SBE/MBE/WBE	Total Billed to Date	Percentage of Billed to Date	Total Percentage of Contract	Contractor/Subcontractor Address
	\$0.00						\$0.00	\$0.00	\$0.00	#DIV/0!	#DIV/0!	
	\$0.00						\$0.00	\$0.00	\$0.00	#DIV/0!	#DIV/0!	
	\$0.00						\$0.00	\$0.00	\$0.00	#DIV/0!	#DIV/0!	
	\$0.00						\$0.00	\$0.00	\$0.00	#DIV/0!	#DIV/0!	
	\$0.00						\$0.00	\$0.00	\$0.00	#DIV/0!	#DIV/0!	
	\$0.00						\$0.00	\$0.00	\$0.00	#DIV/0!	#DIV/0!	
	\$0.00						\$0.00	\$0.00	\$0.00	#DIV/0!	#DIV/0!	

Good Faith Efforts of Bidders, requirements:

The following actions shall be taken by a bidder in establishing a good faith effort to solicit and award subcontracts to eligible small businesses, as established in the RFP:

- Attempted to locate qualified potential small business subcontractors
- Requested a listing of small businesses from the Division if none are known to the Bidder.
- Filed a record of efforts, including the names of businesses contacted and the means and results of such contacts
- Provided all potential subcontractors with detailed information regarding the specifications.
- Attempted, wherever possible, to negotiate prices with potential subcontractors submitting higher than acceptable price quotes.
- Maintained adequate records to document efforts

I CERTIFY THAT THE ABOVE FIRMS WERE AWARDED CONTRACTS, THAT THE AMOUNTS LISTED ARE ACCURATE, AND THAT PAYMENTS WERE MADE IN ACCORDANCE WITH CONTRACTUAL OBLIGATIONS. CANCELED CHECKS AND/OR SUPPORTING INFORMATION WILL BE ON FILE FOR INSPECTION OR AUDIT.

X

COMPANY OFFICIAL'S SIGNATURE

Telephone

PRINT NAME:

CHAPTER VIII

CONSTRUCTION CLOSE OUT

1. Introduction

This section deals with those actions that should be taken when the construction phase of the project is close to being completed. There are specific actions that should be accomplished to finish the project, and once the project is completed the warranty period begins.

2. Final Inspection and Punch List

Prior to recommending to the Subrecipient and the EDA that the project is complete and ready to be reviewed by the Subrecipient, the Project Engineer should prepare a list of project deficiencies or work remaining to be completed and presents this list to both the Contractor and the Subrecipient. This list of project deficiencies is known as a “punch list.”

When the Contractor is confident that the project has been satisfactorily completed and any punch list items complied with, the Contractor will request the Project Engineer inform the Subrecipient and the EDA that the project is ready for final inspection.

The final inspection is designed to walk all parties through the entire project, pointing out the work completed by the Contractor. The Subrecipient and NJEDA officials may question some of the Contractor's work or clean up and request that these items be taken care of before the Subrecipient will take possession of the project. In this case, the Project Engineer should prepare a final punch list and present it to the Contractor. If the number of items on the final punch list is very small, the Project Engineer may recommend to the Subrecipient that a Certificate of Substantial Completion (AIA G704) be prepared.

3. Certificate of Substantial Completion (AIA G704)

When the Project Engineer recommends that the work is substantially complete, he or she will issue a “Certificate of Substantial Completion”. The issue date of the certificate sets the warranty dates, and most important to the Contractor, it releases the Contractor's surety company's obligation to complete the work in the event the Contractor does not or cannot. Therefore, the Subrecipient, should only sign the Certificate of Substantial Completion when they have accepted the project the project, and when the Project Engineer recommends that the work is substantially complete.

The Certificate of Substantial Completion contains an area for the Project Engineer and the Subrecipient to list minor items that remain to be completed under terms of the contract. The Project Engineer generally will recommend that the Subrecipient retain sufficient funds from the Contractor's payment requisition to ensure that the work is completed by the Contractor. The payment requisition for the work completed and recommended by the Project Engineer up to the date of the Certificate of Substantial Completion should be labeled “SEMIFINAL” if any work or punch list items remain to be completed, and the conditions stipulated in the Certificate of Substantial Completion should be attached to the payment requisition.

4. **Engineer’s Certificate of Completed Work**

A copy of the Certificate for Acceptance (Exhibit 7-1), and Final Payment, signed by the Project Engineer/Architect, must be submitted to NJEDA prior to project closeout. This certificate must cover all work included in the project (regardless of funding source), including Subrecipient cash and in-kind. The certificate must state that work has been completed in accordance with drawings and specifications and is functioning properly with the recommendation for Final Payment.

5. **Certificate of Approval**

Permits obtained for all approved work must be properly closed out per local authority requirements.

6. **Contractor Release of Liens (AIA G706A) and Consent of Surety (AIA G707)**

The Subrecipient shall have in its possession the Contractor’s Affidavit of Release of Liens (AIA G706A) along with copies of signed and notarized releases or waivers of liens for the general Contractor, all subcontractors, suppliers, and others who may have lien rights against the Subrecipient’s property before final payment is made.

The AIA Document G707 Consent of Surety to Final Payment Form is intended for use on construction projects where the contractor is required to furnish a bond. By obtaining the surety's approval of final payment to the contractor and its agreement that final payment will not relieve the surety of any of its obligations, the owner may preserve its rights under the bond.

7. **Warrantees/Guarantees**

Once the Subrecipient and the Project Engineer have signed the Certificate of Substantial Completion, the clock starts running on the Warranty/Guarantee period. The Warranty/Guarantee period shall extend for a minimum of one (1) year. The Warranty/Guarantee period should be clearly defined in the contract between the Subrecipient and the Contractor and should be specific to begin from the date of substantial completion that the Contractor will repair or replace any defective equipment or workmanship at no cost to the Subrecipient.

8. **Final Payment**

When the Contractor has completed all of the work required under the Contract Agreement and all compliance requirements have been met, they are entitled to final payment. Final payment releases all of the retainage previously withheld from the Contractor during the course of the project and represents the final reconciliation between the Subrecipient and the Contractor for services rendered. The Final Payment Requisition looks no different from any other payment requisition that the Subrecipient has processed in the course of the project with the exception that it should clearly state that it is the “Final” requisition.

APPENDIX 7

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Exhibit 7-1: [Engineer/Consultant's Certification for Acceptance and Final Payment](#)

EXHIBIT 7-1

**ENGINEER/CONSULTANT'S CERTIFICATION
For Acceptance and Final Payment**

Owner: _____

Project No: _____

Project: _____

Contractor: _____

Engineer: _____

Contract Date: _____

Date of Completion and Acceptance: _____

The Contractor has notified me that he has completed all work in accordance with the Contract Documents and that it is functioning properly.

I hereby certify that a final inspection of all work under the Contract Documents was conducted by me and to the best of my knowledge; the work has been completed in accordance with the drawings and specifications and is functioning properly.

I have approved all payment estimates, and prepared and received approval of all change orders. I have received the required certifications; instructions for operating the equipment, manuals, and other documents that are applicable to this project from the Contractor and have delivered them to the Owner.

The Owner is now responsible for the security, operation, safety, maintenance, and insurance as applicable to the project. The contractor will warranty all specified work for a period of one year from this date of completion. Notification has been given to the proper Government agencies that the work is completed.

I recommend, under the provision of the Contract Documents that the Work be accepted and that final payment be made.

Executed by the Engineer on this _____ day of _____, 20____.

(Typed Name of Engineer)

(Signature of Engineer)

(SEAL)

The work described above accepted by the consultant is hereby acknowledged and final payment authorized.

(Date)

(Owner)

Attest: _____
(Clerk)

(Name and Title of Official)

(SEAL)

APPENDIX 8
Checklists

Contents

- Exhibit 8-1: [Contract and Construction Documents Tracking Sheet](#)
- Exhibit 8-2: [Contract/Construction Procedures Checklist for *Private Business* Loans and Grants](#)
- Exhibit 8-3: [Bid Package, Contract and Construction Document Tracking Sheet](#)
- Exhibit 8-4: [Contract/Construction Procedures Checklist for *Public Agencies and Non-Profits*](#)
- Exhibit 8-5: [Labor Standards \(LS\)/EEO/AA Document Checklist](#)
- Exhibit 8-6: [Exhibit 8-6: Bid Package and Pre-Construction Document Checklist](#)

Exhibit 8-1: Contract and Construction Documents Tracking Sheet
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Office of Recovery - Neighborhood Community Revitalization (NCR)- D&I (Private & For-Profit)/Stronger NJ Loans

Contract and Construction Documents Tracking Sheet

Forms can be located on the NJEDA's website at: www.njeda.com/sandyconstruction

Instructions:

The following is a list of Contract and Construction Period documents required to be included and or completed and submitted by owners , borrowers and their General Contractors (and Sub-Contractors). Items noted as (Sample) are included for reference only, the use of the document as it pertains to the project is required.

Documents Due Prior to Owner/GC Contract Execution (from Owner/Borrower to NJEDA)		√ Submitted to NJEDA
1	Contractor's New Jersey Business Registration Certificate (BRC)	
2	Important to Review- Information regarding use of SWMVBE's	
3	Contractor's NJEDA SWMVBE Form 1- Utilization Worksheet	
4	Verification of Prime Contractor and Subcontractor Eligibility	
5	Notice of Contract Award (executed contract)	

Documents Required to be attached to Construction Contract		√ Included in Contract
6	CDBG Compliance Provisions for Construction Contracts	
7	CDBG General Conditions (Recommended)	

Documents Required to be completed by General Contractor and included with executed Construction Contract		√ Included with Contract
8	Anti-Lobbying Certification	
9	Contractor's Schedule of Values (AIA G703)	
10	Drug-Free Workplace Certification (HUD-50070)	
11	Certificates of Insurance	

Document Owner/Borrower is Required to Issue to General Contractor prior to Construction Commencement		√ Issued to Contractor
12	Written Notice to Proceed	

Documents for use during Construction		√ Submitted to NJEDA
13	Contractor Payment Applications (AIA G702/703)	
14	Contractor Change Order (AIA G701)	
15	SWMVBE Monthly Contract & Subcontract Activity Report	
16	Contractor Partial Release of Liens (AIA G706A), as required	

Documents for use during Close-Out		√ Submitted to NJEDA
17	Surveyor's Report, if required (HUD-92457)	
18	Engineer/Consultants Certification for Acceptance and Final Payment	
19	Contractor and Subcontractor Release(s) of Liens (AIA G706)	

Checklists Recommended for Your Use		√
20	Contract/Construction Procedures Checklist for Private Business Loans and Grants	
21	Contract and Construction Documents Tracking Sheet	
22	Labor Standards (LS) /Section 3/ EEO/ Affirmative Action (AA)/ SWM/BE Bid Package and Pre-Construction Document Tracking Sheet	

Exhibit 8-2: Contract/Construction Procedures Checklist for *Private Business* Loans and Grants



Contract/Construction Procedures Checklist for *Private Business* Loans and Grants

Project No:
 Project Name:
 Applicant:

The following checklist is intended to serve as a guide to assist during the procurement, contracting, and construction process. This list contains basic requirements for most types of construction projects, it may not be inclusive for all projects and additional information may be required on a project by project basis.

Please Note: Some items require approval prior to proceeding, as noted. Items requiring copies sent to NJEDA will be shaded in the “Copy to EDA” box below.

Item	Requirement	Details	Comments	Approval Required from:	Complete √	Owner to Copy EDA
Contract Management						
1	Owner completes Final Plans, Specifications, and Project Manuals	Provide (1) full size set (if requested), (1) 11x17 set, plus electronic (.pdf) set to EDA				
2	NJEDA Underwriting to perform an construction cost estimate		To be used for comparative verification of contractor costs. Contractor costs to be within 10-15% range of estimate.	NJEDA document		
3	Prime Contractor and Subcontractor Clearance (Debarment check)	Owner to provide Contractor and Subcontractor business information to NJEDA to perform clearance.	Debarment websites: https://www.sam.gov/portal/public/SAM/ And http://www.nj.gov/treasury/debarred	NJEDA		
4	Executed Construction Contract	See “ <i>Contract Management</i> ”, Chapter III, of “ <i>CDBG-DR Administrative Manual</i> ”	May use firm fixed-price generic construction contract, but must include Exhibits 5-2 & 5-3 as specified in Appendix 5 and the Mandatory Contract Language as outlined in Chapter 3, Section 3.6 of the “CDBG-DR Administrative Manual”.	Owner		

NJEDA- CDBG-DR Administrative Manual (Revised 6/10/15)

Item	Requirement	Details	Comments	Approval Required from:	Complete √	Owner to Copy EDA
5	Subcontractor Agreement(s)		Copies of all Subcontractor Agreements with contract amounts shown must be provided to NJEDA.			
6	Contractor's Cost Breakdown (Schedule of Values)	Project specific	Line item budget submitted with contract with detailed breakdown, AIA G703			
Construction Period						
7	Pre- Construction Meeting (scheduled within 10 days of contract execution, and prior to commencement of work)	Scheduled with NJEDA Sr. Construction Officer with attendance by: <ul style="list-style-type: none"> • Owner rep. • Contractor 	Pre-Construction Conference Agenda to include NJEDA Sr. Construction Officer items			
8	Written Notice to Proceed- from Owner to Contractor		Contractor shall not begin work prior to receiving such notice.			
9	Permits and approvals (as received by or on behalf of Owner)		To comply with all applicable laws, ordinances, codes, rules and regulations.			
10	Contractor Project Submittals, if applicable	Submitted to Owner or its representative.	Updated Submittal Logs to be provided to EDA.			
11	Contractor Construction Progress Schedule	Expanded detailed schedule correlating with "Time to Completion" specified in contract documents	The schedule may be in the form of a progress chart of suitable scale to indicate appropriately the % of work scheduled for completion by any given date during the period. Update required when work falls more than 10% behind schedule.			
12	Construction Monitoring & Progress Meetings (frequency dependent on project size & duration)	Performed by NJEDA Sr. Construction Officer with attendance by: <ul style="list-style-type: none"> • Owner rep. • Contractor 	Items to be submitted/reviewed: <ul style="list-style-type: none"> • NJEDA Inspection Report • Photographs of site conditions • Review payment applications for completeness • Schedule updates 			
13	Contractor's Requisitions	Submit to NJEDA for approval and payment	<ul style="list-style-type: none"> • AIA G702/ G703 (or equivalent) • Photo verification • SWM/MBE Monthly Activity Report • Lien Releases, Partial and Final as required 	NJEDA		

NJEDA- CDBG-DR Administrative Manual (Revised 6/10/15)

Item	Requirement	Details	Comments	Approval Required from:	Complete √	Owner to Copy EDA
14	Contractor Change Orders	Submit to Owner for approval.	<ul style="list-style-type: none"> AIA G701 (or equivalent) Approval from NJEDA required prior to execution if affects the original approved scope of work, increases the contract price, or causes changes in construction schedule. 	Owner (or NJEDA as required)		
15	Architect's/Engineer's Records (if hired by Owner)	Submit Journal of Architectural/Engineering Actions to EDA.	<ul style="list-style-type: none"> Field orders Site visit Reports Shop drawing review and approval 			
16	Punchlist, if applicable	Performed by Owner's rep. at time of Substantial Completion	Provide executed Certificate of Substantial Completion, AIA G704 (or equivalent) with punchlist items to Contractor			
17	As-Built Drawings	Recorded and held on site by Contractor Final "Record" set copy submitted to: <ul style="list-style-type: none"> EDA 	Recording on one set of contract drawings all changes from the installations originally indicated.			
Construction Close-Out						
18	Certificate of Approval/Permission to Occupy	From Local Authority				
19	Construction Close-Out		Forms required: <ul style="list-style-type: none"> A final request for payment Contractor Release of Liens AIA G706 (or equivalent) Warrantees/guarantees 	NJEDA		
20	Final Construction Completion Inspection	Performed by NJEDA upon written request of the Owner	<ul style="list-style-type: none"> NJEDA Final Inspection Report Photographs 	NJEDA		
21	Operations/Maintenance Manual	Submitted to Owner from Contractor	As required			Copy of Transmittal to NJEDA

Exhibit 8-3: Bid Package, Contract and Construction Document Tracking Sheet
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
Office of Recovery - Neighborhood Community Revitalization (NCR) D&I/Streetscape
 Bid Package, Contract, and Construction Documents Tracking Sheet
Forms can be located on the NJEDA's website at: www.njeda.com/sandyconstruction

Instructions:

The following is a list of Procurement, Contract, and Construction Period documents required to be included and or completed and submitted by Subrecipients and their General Contractors (and Sub-Contractors). Items noted as (Sample) are included for reference only, the use of the document as it pertains to the project is required.

Documents Included in Subrecipients Bid Packet for Construction Contracts		√ Included in Bid Packet
1	Advertisement for Bids	
2	Information for Bidders	
3	Bonding and Insurance Requirements	
4	Bid Bond	
5	Information on Payment and Performance Bonds with copies of Bond Forms	
6	Bidder Qualifications	
7	Sample Contract	
8	Information regarding use of SWMVBE's	
9	NJEDA SWMVBE Form 1- Utilization Worksheet	

Documents to be Submitted by the Subrecipient prior to Bid Opening		√ Submitted to NJEDA
10	Detailed Independent Cost Estimate for full project scope	
11	Submission of current Conflict of Interest Policy	

Documents to be Completed and Submitted with the Construction Bid (per Bidder)		√ Submitted with Bid
12	Bid Bond	
13	Consent of Surety	
14	Bidder Qualifications Form	
15	New Jersey Business Registration Certificate (BRC)	
16	New Jersey Public Works Contractor Registration/Certificate (CRC)	
17	NJEDA SWMVBE Form 1- Utilization Worksheet	

Documents Due After Award by Subrecipient to General Contractor but Before Contract Execution (from Subrecipient to NJEDA)		√ Submitted to NJEDA
18	Verification of Prime Contractor and Subcontractor Eligibility	
19	Notice of Contract Award	

Documents Required to be attached to Construction Contract		√ Included in Contract
20	CDBG Compliance Provisions for Construction Contracts	
21	State of New Jersey Standard Terms and Conditions	
22	CDBG General Conditions (Recommended)	
23	Voluntary Compliance Agreement and Conciliation Agreement	

Documents Required to be completed by General Contractor and included with executed Construction Contract		√ Included with Contract
24	Anti-Lobbying Certification	
25	Performance Bond	
26	Payment Bond	
27	Certificate of Owner's Attorney	
28	Contractor's Schedule of Values (AIA G703)	
29	Drug-Free Workplace Certification (HUD-50070)	
30	Certificates of Insurance	

Document Subrecipient is Required to Issue to General Contractor prior to Construction Commencement		√ Issued to Contractor
31	Written Notice to Proceed	

Documents for use during Construction		√ Submitted to NJEDA
32	Contractor Payment Applications (AIA G702/703)	
33	Contractor Change Order (AIA G701)	
34	SWMVBE Monthly Contract & Subcontract Activity Report	
35	Contractor Partial Release of Liens (AIA G706A), as required	

Documents for use during Close-Out		√ Submitted to NJEDA
36	Surveyor's Report, if required (HUD-92457)	
37	Engineer/Consultants Certification for Acceptance and Final Payment	
38	Consent of Surety (AIA G707)	
39	Contractor and Subcontractor Final Release(s) of Liens (AIA G706)	
Checklists Recommended for Your Use		√
40	Procurement/Construction Procedures Checklist for Public Agencies and Non-Profits	
41	Bid Packet, Contract, and Construction Documents Tracking Sheet	
42	Labor Standards (LS) /Section 3/ EEO/ Affirmative Action (AA)/ SWMVBE Bid Package and Pre-Construction Document Tracking Sheet	

Exhibit 8-4: Contract/Construction Procedures Checklist for *Public Agencies and Non-Profits*



Procurement/Construction Procedures Checklist for Public Agencies and Non-Profits

Project No:
 Project Name:
 Applicant:

The following checklist is intended to serve as a guide to assist during the procurement, contracting, and construction process. This list contains basic requirements for most types of construction projects, it may not be inclusive for all projects and additional information may be required on a project by project basis. **Please Note:** Some items require approval prior to proceeding, as noted. Items requiring copies sent to NJEDA will be shaded in the “Copy to EDA” box below.

Item	Requirement	Details	Comments	Approval Required from:	Complete √	Copy to EDA
Professional Services Procurement and Contracts						
1	Professional Services Procurement (if applicable) by Subrecipient	See “Procurement” , Chapter II, of “CDBG-DR Administrative Manual”	Subrecipient to provide documentation and certification that all required procurement procedures were followed.			
2	Owner (Subrecipient)- Professional Services Agreement (if applicable)	See “Contract Management” , Chapter III, of “CDBG-DR Administrative Manual”	Standard A/E contract templates may be used provided the contract includes the four (4) documents specified in Appendix 5 and the Mandatory Contract Language as outlined in Chapter 3, Section 3.6 of the “CDBG-DR Administrative Manual”.			
3	Professional Firm Clearance (Debarment check) and Business Registration Certificate (BRC) (if applicable)	Subrecipient to provide NJEDA with completed Verification Form(s), Exhibit 2-1: Verification of Professional Services Eligibility, “CDBG-DR Administrative Manual”.	Clearance performed by: NJEDA Debarment websites: https://www.sam.gov/portal/public/SAM/ And http://www.nj.gov/treasury/debarred	NJEDA		

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Item	Requirement	Details	Comments	Approval Required from:	Complete √	Copy to EDA
Subrecipient Pre-Bid Responsibilities						
4	Subrecipient completes Final Plans, Specifications, and Project Manuals		Provide (1) full size set (if requested), (1) 11x17 set, plus electronic (.pdf) set to NJEDA			
5	Subrecipient Administration Training (SAT) Meeting	Scheduled by NJEDA	<ul style="list-style-type: none"> Held prior to bidding Attendance "Strongly Encouraged" 			
6	Subrecipient to obtain an independent construction cost estimate	Must be obtained prior to bid submissions.	To be used for comparative verification of bids submitted. Approved bid to be within 10-15% range of estimate.			
Construction Procurement						
7	Prime Contractor Procurement by Subrecipient	See "Procurement Standards", Chapter II, of "CDBG-DR Administrative Manual"	By sealed competitive bid. Lowest bidder shall be determined during bid opening. Award of Contract shall be made to the lowest, responsible and responsive bidder. Subrecipient to provide documentation and certification that all required procurement procedures were followed.			
8	Prime Contractor and Subcontractor Clearance (Debarment check)	Subrecipient to provide NJEDA with completed Verification Form(s), Exhibit 2-2: Verification of Contractor Eligibility, "CDBG-DR Administrative Manual"	Clearance performed by: NJEDA Debarment websites: https://www.sam.gov/portal/public/SAM/ And http://www.nj.gov/treasury/debarred	NJEDA		
Contract Management						
9	Executed Construction Contract with Payment and Performance Bonds	See "Contract Management", Chapter III, of "CDBG-DR Administrative Manual"	May use firm fixed-price generic construction contract, but must include the four (4) documents specified in Appendix 5 and the Mandatory Contract Language as outlined in Chapter 3, Section 3.6 of the "CDBG-DR Administrative Manual".			
10	Contractor's Cost Breakdown (Schedule of Values)	Project specific	Detailed line item budget submitted with contract, AIA G703 or equivalent			
11	Subcontractor Agreement(s)		Copies of all Subcontractor Agreements with contract amounts shown must be provided to NJEDA.			

NJEDA- CDBG-DR Administrative Manual (Revised 6/10/15)

Item	Requirement	Details	Comments	Approval Required from:	Complete √	Copy to EDA
Construction Period						
12	Pre- Construction Meeting (scheduled within 10 days of contract execution, and prior to commencement of work)	Scheduled with NJEDA Construction Officer with attendance by: <ul style="list-style-type: none"> • Subrecipient Rep. • Contractor 	Pre-Construction Conference Agenda to include NJEDA Construction Officer items			
13	Written Notice to Proceed- from Subrecipient to Contractor		Contractor shall not begin work prior to receiving such notice.			
14	Permits and approvals (as received by or on behalf of Subrecipient)		To comply with all applicable laws, ordinances, codes, rules and regulations.			
15	Contractor Project Submittals	Submitted to A/E	<ul style="list-style-type: none"> • A/E approval required. • Updated Submittal Logs to be provided to EDA, as requested. 			
16	Contractor Construction Progress Schedule	Expanded detailed schedule correlating with "Time to Completion" specified in procurement documents	The schedule may be in the form of a progress chart of suitable scale to indicate appropriately the % of work scheduled for completion by any given date during the period. Update required when work falls more than 10% behind schedule.			
17	Construction Monitoring & Progress Meetings (frequency dependent on project size & duration)	Performed by NJEDA Construction Officer with attendance by: <ul style="list-style-type: none"> • Subrecipient • Contractor 	Items to be submitted/reviewed: <ul style="list-style-type: none"> • NJEDA Inspection Report • Photographs of site conditions • Review payment applications for completeness • Schedule updates 			
18	Record Drawings	Recorded and held on site by Contractor Final "Record" set copy submitted to: <ul style="list-style-type: none"> • Subrecipient and • EDA 	All changes from the installations originally indicated, as observed during the construction of the project, recorded on one set of contract drawings. A Final "Record" recording final locations of the improvements made under this project.			
19	Contractor's Requisitions	Submit to NJEDA for approval and payment	<ul style="list-style-type: none"> • AIA G702/ G703 signed by A/E • Photo verification • SWM/MBE Monthly Activity Report • Lien Releases, Partial and Final as required 	NJEDA		

NJEDA- CDBG-DR Administrative Manual (Revised 6/10/15)

Item	Requirement	Details	Comments	Approval Required from:	Complete √	Copy to EDA
20	Contractor Change Orders	Submitted to A/E for approval	<ul style="list-style-type: none"> AIA G701 Approval from NJEDA required prior to execution if affects the original approved scope of work, increases the contract price, or causes changes in construction schedule. 	A/E (or NJEDA as required)		
Construction Close-out						
21	Architect's/Engineer's Duties (if hired by Subrecipient)	Submit Journal of Architectural/Engineering Actions to EDA.	<ul style="list-style-type: none"> Field orders Site visit Reports Shop drawing review and approval 			
22	Final Inspection & Punchlist	Punchlist performed by A/E at time of Substantial Completion. Final inspection to include Subrecipient & NJEDA.	<ul style="list-style-type: none"> NJEDA Final Inspection Report Photographs A/E to provide executed Certificate of Substantial Completion, AIA G704 with minimal punchlist items to Contractor if approved by all parties. 	NJEDA		
23	Surveyor's Report and "As-Built" Survey (if applicable)	<ul style="list-style-type: none"> At Owner request of Contractor or when construction is complete. 	Form HUD-92457 & ALTA/ACSM As-Built Land Title Survey Performed by a licensed surveyor and show the exact location of on-site improvements, including utility lines and easements, and site contour lines.			
24	Certificate of Approval	From Local Authority				
25	Construction Close-Out		Forms required: <ul style="list-style-type: none"> A final request for payment Consent of Surety AIA G707 Contractor Release of Liens AIA G706 Warrantees/Guarantees 	NJEDA		
26	Maintenance Bond, as required by Subrecipient	A maintenance bond shall be provided by the GC on labor and materials for a period of one (1) or two (2) years and shall be no more than 100% of project costs.	Maintenance Bond: N.J.S.A. 40A:11-16.3			
27	Operations/Maintenance Manual	Submitted to Subrecipient from Contractor	As required			Copy of Transmittal to NJEDA

Exhibit 8-5: SBL PROGRAM - Labor Standards (LS)/EEO/AA Document Checklist

NEW JERSEY ECONOMIC DEVELOPMENT
Office of Recovery - New Jersey Stronger Business Loan (SBL) Program
 Labor Standards (LS) / EEO / Affirmative Action (AA)
 Document Check List
Forms can be located on the NJEDA's website at:
www.njeda.com/affirmativeaction

Instructions

The following is a complete list of documents for LS/EEO/AA/ SWM/BE compliance for the General Contractor and their subcontractors.

- * The General Contractor must download the "**Complete Construction Package Documents and Mandatory Contract Language**" from the NJEDA's website. (items 1 thru 12)
- * The General Contractor must submit "**Documents to be Completed and Submitted before Contract Execution**" to Lorena Young at Lyoung@njeda.com in either electronic or hard copy format. (items, A thru F)
- * "**General Contractor Notification of Monthly Compliance Requirements and Site Monitoring**" items will be discussed during the Pre-Construction Meeting to be scheduled. (items a thru f)

Complete Construction Package Documents and Mandatory Contract Language		√ Downloaded by General Contractor
1	HUD - 4010 Federal Labor Standards	
2	Labor Standards Posters (3 samples)	
3	Certification by Proposed General Contractor Regarding EEO	
4	Certification by Proposed Subcontractor Regarding EEO	
5	Affirmative Action / EEO /Prevailing Wage Addendum to Construction Contracts (AB/GC)	
6	Affirmative Action / EEO /Prevailing Wage Addendum to Construction Contracts (GC/SUBS)	
7	Official Wage Determinations (Federal, Statewide, State-COUNTY)	
8	NJEDA Project Wage Rate Sheet	
9	NJEDA Trade Codes for Certified Payroll	
10	U.S. Department of Labor Payroll (ONB No. 1235-0008) Form	
11	NJEDA Initial Construction Project Workforce Manning Report (AA Form 1)	
12	NJEDA Sandy Monthly Project Workforce Report - Construction (AA Form 2)	

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Page 2

Office of Recovery - New Jersey Stronger Business Loan (SBL) Program

Labor Standards (LS) / EEO / Affirmative Action (AA)

Document Tracking Sheet

Documents to be Completed and Submitted before Contract Execution		√ Submitted to the NJEDA
A	Certification by Proposed General Contractor Regarding EEO	
B	Certification by Proposed Subcontractor Regarding EEO	
C	Affirmative Action / EEO /Prevailing Wage Addendum to Construction Contracts (AB/GC)	
D	Affirmative Action / EEO /Prevailing Wage Addendum to Construction Contracts (GC/SUBS)	
E	NJEDA Project Wage Rate Sheet	
F	NJEDA Initial Construction Project Workforce Manning Report (AA Form 1)	

General Contractor Notification of Monthly Compliance Requirements and Site Monitoring		√ Submitted to the NJEDA
a	U.S. Department of Labor Payroll (ONB No. 1235-0008) Form (Original ink signatures and hard copy format ONLY acceptable for submission)	
b	Form HUD-11 Record of Employee Interview	
c	NJEDA Sandy Monthly Project Workforce Report - Construction (AA Form 2) this form requires online registration and monthly electronic submission	
d	NJEDA Sample Referral letter to Union Hall	
e	NJEDA AA Sample Referral Letter to Minority & Referral Org	
f	NJEDA Prevailing Wage AA EEO SWMVBCE Completion Certificate GC & SUBS	

Exhibit 8-6: Bid Package and Pre-Construction Document Checklist

NEW JERSEY ECONOMIC DEVELOPMENT
Office of Recovery - Neighborhood Community Revitalization (NCR)/Streetscape Program
 Labor Standards (LS) /Section 3/ EEO/ Affirmative Action (AA)
 Bid Package and Pre-Construction Document Check List
 Forms can be located on the NJEDA's website at:
www.njeda.com/affirmativeaction

Instructions

The following is a complete list of documents for LS/ Section 3/ EEO/ AA compliance for the general contractor and their subcontractors.

- * Each Bidder must download the "Complete Construction Package Documents and Mandatory Contract Language" from the NJEDA's website. (numbers 1-26)
- * Each bidder must submit with their bid "Documents to be Completed and Submitted with the Construction Bid (per Bidder)" to be considered a qualified bidder. (items A-H)
- * The awarded General Contractor must submit "Documents Due After Award by General Contractor but Before Contract Execution" (items a-h)
- * The "General Contractor Notification of Monthly Compliance Requirements and Site Monitoring" items will be discussed during the Pre-Construction Meeting to be scheduled. (items i - ix)

Complete Construction Package Documents and Mandatory Contract Language		Received by Contractor
1	HUD - 4010 Federal Labor Standards (mandatory GC contract language)	
2	Certification of Bidder NCR Federal Labor Standards and Davis Bacon Act	
3	U.S. Department of Labor Payroll Form (ONB No. 1235-0008 Certified Payroll)	
4	Force Labor Summary Record (if applicable)	
5	Prevailing Wage Determinations (PWDs) - Official Lock-in Federal and unofficial Statewide, State-COUNTY (NOTE: Official Lock-in PWDs for NJ State-COUNTY and NJ Statewide are issued before construction contract execution)	
6	NJEDA Project Wage Rate Sheet	
7	NJEDA Trade Codes for Certified Payroll	
8	Labor Standards Posters (3 Samples)	
9	Certification of Bidder Regarding EEO	
10	Certification by Proposed Subcontractor Regarding EEO	
11	Subrecipient and General Contractor Affirmative Action / EEO Section 3/ Prevailing Wage Addendum to Construction Contracts and Bid Documents	
12	Affirmative Action / EEO Section 3/ Prevailing Wage Addendum to Construction Contracts and Bid Documents (General Contractor and Subcontractor/s)	
13	NJEDA Initial Construction Project Workforce Manning Report (AA Form 1)	
14	NJEDA Sandy Monthly Project Workforce Report - Construction (AA Form 2)	
15	Exhibit 1 Section 3 Bidders Proposed Contracts and Subcontractors	
16	Exhibit 2 Section 3 Business Certification Form	
17	Exhibit 3 Bidders Estimated New Hires	
18	Exhibit 4 Section 3 Employee & Trainee Data Form 4	
19	Exhibit 5 Section 3 Employee Household Income Certification Form 5	
20	Exhibit 6 Certification of Bidder Regarding Section 3 and Segregated Facilities	
21	Exhibit 7 Bidder Certification of Proposed SUBS Regarding Section 3 and Segregated Facilities	
22	Exhibit 8 Section 3 Plan Format (template)	
23	Exhibit 9 Section 3 Plan Statement of Commitment	
24	Appendix A Section 3 Clause (mandatory GC contract language)	
25	Appendix B Section 3 Contractors Business Utilization Form	
26	Appendix C Section 3 New Hires Compliance Form 12	

Documents to be Completed and Submitted with the Construction Bid (per Bidder)		√ Submitted to the NJEDA
A	Certification of Bidder Regarding EEO	
B	Certification of Bidder NCR Federal Labor Standards and Davis Bacon Act	
C	Exhibit 1 Section 3 Bidders Proposed Contracts	
D	Exhibit 2 Section 3 Business Certification Form	
E	Exhibit 3 Bidders Estimated New Hires	
F	Exhibit 6 Certification of Bidder Regarding Section 3 and Segregated Facilities	
G	Exhibit 8 Section 3 Plan Format (template)	
H	Exhibit 9 Section 3 Plan Statement of Commitment	
Documents Due After Award by General Contractor but Before Contract Execution		√ Submitted to the NJEDA
	NJEDA Project Wage Rate Sheet NOTE: OFFICIAL Prevailing Wage Determinations are issued at this time NJ State and NJ Statewide	
a	Certification by Proposed Subcontractor Regarding EEO	
c	Subrecipient and General Contractor Affirmative Action / EEO Section 3/ Prevailing Wage Addendum to Construction Contracts and Bid Documents	
d	Affirmative Action / EEO Section 3/ Prevailing Wage Addendum to Construction Contracts and Bid Documents (General Contractor and Subcontractor/s)	
e	NJEDA Initial Construction Project Workforce Manning Report (AA Form 1)	
f	Exhibit 4 Section 3 Employee & Trainee Data Form 4	
g	Exhibit 5 Section 3 Employee Household Income Certification Form 5	
h	Exhibit 7 Bidder Certification of Proposed SUBS Regarding Section 3 and Segregated Facilities	
General Contractor Notification of Monthly Compliance Requirements and Site Monitoring		√ Submitted to the NJEDA
i	ONB No. 1235-0008 Certified Payroll Form (original ink signatures required)	
ii	Force Labor Summary Record (if applicable)	
iii	Form HUD-11 Record of Employee Interview	
iv	NJEDA Sandy Monthly Project Workforce Report - Construction (AA Form 2) NOTE: this form requires online registration and monthly electronic submission	
v	NJEDA Sample Referral letter to Union Hall	
vi	NJEDA AA Sample Referral Letter to Minority & Referral Organization	
vii	Appendix B Section 3 Contractors Business Utilization Form	
viii	Appendix C Section 3 New Hires Compliance Form	
ix	NJEDA Prevailing Wage AA EEO SWM/VBE Completion Certificate GC & SUBS	