

CHAPTER 6

CHAPTER 6. SUBMISSION AND PROCESSING OF REQUEST FOR FIRM COMMITMENT
FOR DIRECT LOAN FINANCING TO INITIAL CLOSING

SECTION-1 - GENERAL

- 6-1. PROCESSING STAGE AND VARIATIONS. Each Borrower shall submit a Request for Firm Commitment for Direct Loan Financing. Where a Borrower is given permission to bypass the Conditional Commitment Stage and proceed directly to the Firm Commitment Stage (see paragraph 5-1a of this Handbook), all documentation specified in Chapter 5 of this Handbook shall be submitted as part of the Request for Firm Commitment. Certain building components are eligible for advances of loan proceeds when stored offsite at a location approved by the local HUD Field Office. For instructions on the handling of such advances, see Paragraph 7-8 of this Handbook.
- 6-2. DESCRIPTION OF FIRM COMMITMENT STAGE. In most cases, HUD processing at the Firm Commitment Stage is a review of case submissions to assure that the project proposal conforms to previous processing conclusions outlined in the Conditional Commitment; such determinations made at earlier processing stages shall not be reexamined, except to the extent made necessary by changes in the Borrower's proposal. Where appropriate, HUD processing will also include a review of competitive bidding documents. The firm commitment must be issued prior to the invitation for bid with reprocessing performed as necessary subsequent to the selection of the contractor (see Section 8 of this Chapter for further instructions). *
- 6-3. TARGET DATE. The Request for Firm Commitment shall be submitted within 120 calendar days after the date of the Conditional Commitment, or, where the Borrower has received permission to bypass the Conditional Commitment Stage, within 120 calendar days after the Borrower notifies the Field Office of its acceptance of the fund reservation. Contract drawings and specifications must be in final form when the Request for Firm Commitment is submitted.
- 6-4. REQUIRED EXHIBITS.
- a. The following exhibits (see Appendix 23 for number of copies) must be submitted with the application for Firm Commitment processing:
1. Form HUD 92013, completed in its entirety;
 2. All architectural exhibits in final form;
 3. Form FHA 2328 - "Contractor's and/or Mortgagor's (Borrower's) Cost Breakdown",
 4. Form FHA 2457 - "Survey Instructions and Certificate" and Survey; and

5. Any other exhibits and documentation which may have been required by the Conditional Commitment.
 - b. Where the Borrower proceeds directly to the Firm Commitment Stage, in addition to the exhibits listed in subparagraph a above, it shall submit those exhibits listed in paragraph 5-6 of this Handbook.
- 6-5. RECEIPT OF REQUESTS FOR DIRECT LOAN FINANCING. Requests for Firm Commitment processing shall be forwarded to the PC&R staff immediately upon receipt in the Field Office. The PC&R staff shall date-stamp and log in each Request and distribute it to the technical and program offices for screening for completeness.
- 6-6. SCREENING FOR COMPLETENESS.
 - a. Each technical and program office shall review the Request to determine whether all required exhibits pertinent to its review have been submitted and are completed properly.
 - b. Comments shall be returned to the PC&R staff within one working day after receipt of the Request for review. The PC&R staff shall be responsible for assuring that the review comments are received in a timely fashion.
 - c. The PC&R staff shall compile the comments referenced above for each Request and forward them to the MHR.
- 6-7. ELIGIBILITY FOR TECHNICAL PROCESSING.
 - a. A Request which is complete based on the MHR's review of the comments from the technical and program staffs shall be eligible for technical processing. The MHR shall so advise the PC&R staff which shall in turn notify the technical and program staffs to begin processing (see Note 1).

Note 1: All processing to be performed by the technical and program staffs is described in Sections 2 through 6 of this Chapter.

- (6-7) b. For a Request which is incomplete, the MHR shall prepare a letter for the signature of the Housing Director, listing the deficiencies and inviting the Borrower to correct these by a specific date (generally not more than 15 days from the date of the letter). The letter also shall state that if the additional information is not received by the specified date, the Request will be returned.

- c. Additional information submitted in response to the letter described above shall be logged in by the PC&R staff and forwarded to the MHR for review for acceptability. If the MHR determines that a Request is then complete, the procedures outlined in subparagraph a above, shall be followed. If the Request is still incomplete, the MHR shall prepare a letter to the Borrower returning the Request, outlining the deficiencies, and inviting the Borrower to resubmit the application in a complete form, provided the Borrower's Section 202 fund reservation has not expired.

6-8. COORDINATION OF TECHNICAL AND PROGRAM REVIEWS.

- a. The PC&R staff shall be responsible for keeping track of the progress of a Request through processing in the technical and program offices, and shall advise the MHR when target dates are not being met.
- b. The MHR shall monitor the overall progress of Request through processing, to identify problem areas, and shall assist the technical and program staffs in securing any additional documentation or information which may be needed in order to resolve problems and expedite processing.
- c. The Wage Requirement Clerk, in consultation with the MHR, shall follow processing progress in order to determine the anticipated date for the start of construction. Where no general wage determination for the project has been published in the Federal Register, the Clerk will initiate the request to the Department of Labor for issuance of the schedule of Davis-Bacon Act wages for the project at the appropriate time in order to have a current wage rate determination in effect When construction begins, or, for projects to be competitively bid, when bids are to be solicited.

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SECTION 2 - ARCHITECTURAL AND ENGINEERING ANALYSIS

- 6-9. GENERAL. All instructions contained in HUD Handbook 4460.1 relating to developing and processing of projects at Firm Commitment Stage shall apply, except as modified herein. The reviewer shall assure that the project has been developed in accordance with conditions established in the Conditional Commitment Stage. No substantial deviations from the previously approved design shall be permitted at this stage (see Chapter 2, Section 5 of HUD Handbook 4445.1). In addition, amenities not approved in the initial application may not be added at this stage.
- 6-10. REVIEW AND APPROVAL DRAWINGS. Final working drawings and

outline specifications shall be reviewed and approved by HUD. No architects', engineers', or designers' certifications are permitted in the Section 202 program.

SECTION 3 - COST ANALYSIS

- 6-11. GENERAL. Processing shall primarily involve the confirmation of cost conclusions developed in the Conditional Commitment Stage, provided a Conditional Commitment Letter has been issued.
- a. Where the Borrower's Request indicates any change from the previous processing, the Cost Analyst shall reevaluate his/her previous conclusions in the context of the revised Request.
 - b. If the Conditional Commitment Stage was bypassed (new construction projects only) and a Request is made directly for a firm commitment, all procedures and steps required for conditional commitment processing shall be combined with firm commitment processing.
 - c. Processing shall be accomplished in accordance with the instructions set forth in Handbook 4450.1, except as modified herein.
- 6-12. REHABILITATION PROJECTS. Upon receipt of the Borrower's Request with accompanying documents and exhibits, including the detailed work write-up indicating specific items of work to be accomplished and the estimated cost of each item shown by identified units of measurement, e.g., square feet, linear feet, fixture, door, window, etc., Form FHA-2328, HUD-FHA Supplementary Conditions, and AIA-201, General Conditions to the Construction Contract, for each contract specification, shall be reviewed to assure that all agreements and conclusions reached during Conditional Commitment Stage processing have been taken into account.
- a. Any errors, omissions, ambiguities, or other nonconformities must be corrected.
 - b. If the Request is consistent with previous determinations, processing will follow outstanding instructions.

SECTION 4 - VALUATION ANALYSIS

- 6-13. GENERAL. Valuation processing at this stage will be in accordance

with HUD Handbooks 4465.1 and 4480.1. except as modified herein. In this stage, all processing not completed in previous stages is completed. For example, detailed estimates of on-site and off-site land costs, verified sales price of the site and "as-is" value of the land for cost certification purposes, if not already performed because of insufficient information, are completed. Fee appraisers may not be used for any portion of the Valuation analysis.

- 6-14. RE-ANALYSIS IS LIMITED TO CHANGES NECESSITATED BY BORROWER'S ACTIONS. If there are changes requiring modification of the estimated total replacement cost or operating expenses, Contract Rents will have to be redetermined in accordance with instructions in paragraph 5-36.

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SECTION 5 - MORTGAGE CREDIT ANALYSIS

- 6-15. GENERAL. Mortgage Credit processing at the Firm Commitment Stage primary shall involve updating of conclusions reached at the Conditional Commitment Stage and assuring that the Borrower has the ability to close the transaction.
- a. Any commitments made by the Sponsor or other parties to provide funds to meet the cash requirements or donations of furniture, supplies, equipment, etc., must be secured in writing.
 - b. If the Conditional Commitment Stage is bypassed (new construction projects only) and a Request is made directly for a Firm Commitment, all procedures and steps required for conditional commitment processing shall be combined with firm commitment processing.
 - c. Processing shall be in accordance with the instructions set forth in Handbook 4470.1 and Handbook 4480.1, except as modified herein.
- 6-16. REVIEW OF THE BORROWER'S PLAN TO MEET OPERATING EXPENSES. If as a condition of approval of the direct loan at the Conditional Commitment Stage, the Borrower was required to furnish evidence of its capacity to meet the operating costs not directly related to the project, such as operating transportation services, recreational facilities, etc., the MCE must review the documentation submitted to determine that the Borrower is capable of operating the project. If the evidence submitted is unacceptable, the MCE shall advise the MHR. Unless adequate documentation in this area is submitted, the project will be rejected by Mortgage Credit.

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SECTION 6 - PREPARATION AND ISSUANCE OF
COMMITMENT FOR DIRECT LOAN FINANCING

6-17. HOUSING DIRECTOR

- a. The Housing Director shall review the underwriting and program determinations and amend or modify conclusions as he/she deems necessary (with appropriate documentation). If he/she determines that a firm commitment (Commitment for Direct Loan Financing) should be issued, he/she shall direct the MHR to prepare the commitment.
- b. If the Housing Director concurs in the conclusions reached, he/she shall sign the Form HUD-92264, prepare Form FHA-2438, Underwriting Summary Report, and forward them and any memoranda to the MHR for preparation of the commitment.
- c. In completing Form FHA-2438, the Housing Director shall enter the recommended time period before first payment to principal as 150 percent of the estimated construction time described on Line 52 of Form HUD-92264.

6-18. AMENDMENT OF SECTION 202 RESERVATION.

- a. Decreases. No decreases to outstanding fund reservations shall occur until completion of cost certification and final closing, except where the outstanding fund reservation exceeds the maximum approvable mortgage based on firm commitment processing by \$100,000 or more. In such cases, the MHR shall prepare a Form - 718 reducing the fund reservation to the amount for which the Commitment for Direct Loan Financing is being issued. This action shall only occur prior to the initial loan closing when it is determined that the loan will close based on the firm commitment loan amount.
- b. Increases. A memorandum requesting the increase, with supporting justification, shall be prepared by the MHR for the signature of the Area Manager. It shall be submitted to the Office of Multifamily Housing Development, Attention: Direct Loan Branch, through the Regional Director of Housing. If approved by Headquarters, a Form HUD-185 will be issued assigning the funds to the Regional Office, which will in turn issue a Form HUD-185.1 to the Field Office. Upon receipt of the fund assignment, the MHR shall prepare Form HUD-718, which shall be processed in the same manner described in paragraph 4-51.

6-19. PREPARATION OF COMMITMENT FOR DIRECT LOAN FINANCING, FORM FHA 2432-EH (FIRM COMMITMENT).

- a. The MHR shall prepare the firm commitment in accordance with the data included on Forms 2438, 92264 and 2264-A.
- b. For projects which were processed with tax abatement for less than the term of the loan, the MHR shall add the following condition to the commitment: "The Borrower will be required to use 100 percent of the tax savings provided by the tax abatement to pay an accelerated loan amortization during the abatement period. That is, \$ _____, the annual amount of the tax abatement must be applied to that portion of the loan amount which it would completely amortize during the abatement term with level annuity payments at the permanent interest rate."

6-20. PREPARATION AND APPROVAL OF THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM ACC/HAP CONTRACT LIST, FORM HUD-5041C (LIST).

- a. The MHR and/or the PC&R staff shall prepare the ACC List and transmit it together with the Commitment for Direct Loan Financing to the Housing Director for review. If the List is approvable, he/she shall recommend that the Area Manager approve the List.

- (1) Prior to transmittal of the List to the Area Manager approval, the PC&R staff shall. Telephone the Office of the Regional Housing to obtain a List Number.

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- (6-20) (2) Upon approval of the List, the PC&R staff shall send copies to RAD, the Office of Regional Housing, the Office of Multifamily Housing Development, Attention Direct Loan Branch, and Chief, Loans Branch (OFA). The PC&R staff shall file the original in the Field Office docket, and transmit the docket to the Area Counsel for preparation of the ACC and the Agreement.

- b. Preparation of the Agreement to Enter into Housing Assistance Payments Contract (Agreement). After receipt or the docket, the Area Counsel shall prepare the Agreement and three copies and forward them to the PC&R staff to be transmitted to the Borrower with the firm commitment. Housing Assistance Payments (HAP) Contract (Form HUD-52522D) shall be completed and included as an addendum to the Agreement. In preparation of the Contract.

Section 2.7(b) and (c) of the Form HUD - 52522D shall be deleted and replaced with the following:

"b. Contract Rent Adjustments. Contract Rents shall automatically be adjusted whenever a HUD-approved rent increase as provided under the Regulatory Agreement takes effect, and the HUD-approved rents shall become the new Contract Rents."

6-21. PREPARATION OF THE BUILDING LOAN AGREEMENT.

- a. The Building Loan Agreement, Form FHA-2441-EH, shall be prepared by the Area Counsel in an original and 6 copies, and forwarded to the PC&R staff to be transmitted with the firm commitment to the Borrower for execution.
- b. The amount of the project contingency shall be included in the Building Loan Agreement with the following Note. "Any loan proceeds attributable to this contingency which are undrawn at final closing shall be transferred to the Replacement Reserve Fund."
- c. Interest Rate. Inasmuch as a loan must be initially closed in order to fix the interest rate, the Building Loan Agreement shall include a provision which reads as follows:

"The interest rate applicable to the loan, as well as the HUD-approved loan amount, are subject to change, and reprocessing may be required if the loan is not initially closed within the same fiscal year in which this Agreement is executed."

SECTION 7 - ACTIONS PRIOR TO INITIAL CLOSING

- 6-22. GENERAL. This Section covers those actions required to be taken by the Field Office staff and the Borrower after issuance of the firm commitment and precedent to initial closing and initial disbursement of loan proceeds.
- 6-23. EXECUTION OF THE AGREEMENT TO ENTER INTO HOUSING ASSISTANCE PAYMENTS CONTRACT (AGREEMENT). The Borrower shall execute all copies of the Agreement and return them to the Field Office prior to the scheduled initial closing. Upon receipt of the Agreement, the Area Counsel shall review for legal sufficiency and approve it for execution by the Housing Director. After the Housing Director executes the Agreement, the PC&R staff shall retain one fully executed copy to be given to the Borrower at initial closing and retain two copies for its records. The HM Division shall also be notified when the Agreement has been executed.
- 6-24. NOTIFICATION OF HAZARD INSURANCE REQUIREMENTS. The Area Manager shall notify the Borrower of the hazard insurance requirements by

a formal notification incorporating the provisions of Appendix 28, Property Insurance Requirements for Section 202 Housing for the Elderly and Handicapped. Attached thereto will be Form HUD-92329 (Appendix 29), Property Insurance Schedule, which has been completed by the Cost Analyst. The Borrower should be notified that all required insurance must be obtained and evidence thereof be made available at the time of the initial closing.

6-25. EXECUTION OF THE BUILDING LOAN AGREEMENT.

- a. Upon receipt of the Form FHA-2441-EH, Building Loan Agreement, (Appendix 30), from the Field Office, the Borrower shall review and execute all copies and return them to the Field Office prior to the scheduled initial closing.
- b. Upon receipt of the executed copies in the Field Office, they shall be reviewed by the Area Counsel and, if in order, transmitted to the Area Manager for execution on behalf of the Government.

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- (6-25) c. After full execution, the Building Loan Agreement shall be distributed as follows:
- (1) Original copy, Regional Accounting Division (This copy must be furnished prior to processing of first requisition.)
 - (2) Fully Executed copy, Field Office Docket
 - (3) Fully Executed copy, Borrower
 - (4) Conformed copy, Office of Multifamily Housing Development
 - (5) Conformed copy, Area Counsel Docket
 - (6) Conformed copy, Direct Loan Branch, Headquarters
 - (7) Conformed copy, Mortgage Credit Staff

6-26. PREPARING FOR INITIAL DISBURSEMENT OF LOAN FUNDS.

- a. The MHR shall provide the Borrower copies of the Form HUD-92403-EH, Requisition for Disbursement of Section 202 Loan Funds, (Appendix 31), and supporting forms, together with copies of Form HUD-274, Designation of Depository for Direct Deposit of Loan and/or Grant Funds, with instructions for completion and submission to the Field Office.
- b. The Borrower shall be advised that the forms and draft copies of all closing exhibits described in Chapter 7 of this Handbook

must be submitted at least 15 working days prior to the scheduled initial closing in order to permit sufficient time for processing the requisition and delivery of the check to the Field Office.

- c. Upon receipt of Form HUD-92403-EH, Form HUD-274, and the draft copies of the closing exhibits, the MHR shall forward one copy of each of the draft closing exhibits, and all copies of Form HUD-92403-EH and Form HUD-274 to the Mortgage Credit Staff for review and approval. The remaining copies of the draft closing exhibits shall be sent to the Area Counsel for review.

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(6-27) d. Mortgage Credit Review. The MCE shall review:

- (1) Form HUD-274 to determine that the depository is acceptable as outlined in Section 885.420 of the Regulations.
 - (2) Form HUD-92403-EH and all accompanying bills and receipts using procedures outlined in Handbook 4470.1 as a guide. No item shall be recommended for payment unless appropriate supporting documentation is received.
 - (3) All requests for loan disbursement from the project contingency to determine whether the requests are in accordance with instructions contained in paragraph 5-32d and, additionally, in the cases involving rehabilitation that:
 - (a) The item is not eligible for payment out of the contingency reserve, or
 - (b) The contingency reserve has been depleted.
 - (4) The draft closing exhibits. The MCE then shall prepare Form FHA-2283, Financial Requirements for Closing, in accordance with Handbook 4480.1.
- e. The approved Form HUD-92403-EH and executed Form HUD-274 shall be transmitted to the Regional Accounting Division, specifying that the Treasury check be dated as of the date of the initial closing. Sufficient time (approximately 20 working days) should be allowed for the check to be delivered to the Field Office by the scheduled closing date. To facilitate all loan-disbursements, documentation relating to the disbursements should be handcarried, where possible.
 - f. In the event it becomes necessary to cancel or reschedule the initial closing, the Field Office should determine whether the time delay is sufficient to warrant canceling the request for

check or, if the check has already been received, forwarding it to the RAD for return to the Treasury.

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SECTION 8 - AWARD OF CONSTRUCTION CONTRACT BY COMPETITIVE BIDDING
OR NEGOTIATION

6-27. GENERAL. Contract award based on competitive bidding is appropriate and encouraged for all projects. It is mandatory, unless the project meets specific eligibility criteria permitting noncompetitive award as an alternative.

- a. Procedural Requirements. Project review and approval documents are the same for projects which are competitively bid or negotiated except as specified in this Section.
- b. Borrower. The Borrower is referred to as "Owner" in the bidding and contract documents for a competitively bid project, and in this Section.

6-28. COMPETITIVE BIDDING IS MANDATORY:

- a. For all Section 202 projects that do not meet criteria for negotiated noncompetitive construction contracts. (See paragraph 6-29, below.)
- b. For all Section 202 projects that, before construction starts, no longer meet the eligibility criteria for a negotiated noncompetitive contract.

6-29. ELIGIBILITY CRITERIA FOR A NEGOTIATED CONSTRUCTION CONTRACT.

- a. Contract Rent Limits. The Owner agrees by letter at the fund reservation stage to enter into a Section 8 HAP Agreement and a Section 8 HAP Contract limiting rents to 110 percent of published Fair Market Rents for projects for the elderly or handicapped in effect at the time the fund reservation is made; or
- b. Mortgage Limits. The mortgage amount is less than \$2,000,000; or
- c. Trade Union. The Owner of the project is a labor organization.
- d. Continued Eligibility. Project eligibility must be maintained by the Owner. Where the conditions of paragraphs a, b or c above are met at the fund reservation stage, but HUD determines before the start of construction that such condition can no longer be met, competitive bidding will be required.

6-30. LIMITATIONS ON NEGOTIATED PROJECTS.

- a. Construction Contract. Form FHA 2442A-EH, Construction Contract-Cost Plus shall be used.
 - (1) Reimbursement for costs, plus a fixed fee, the total of which shall not exceed a stipulated amount, shall be defined in the completed contract, and
 - (2) Incentive Payment to the contractor for early completion may be provided in a rider to the contract using Form HUD 92443, Construction Contract Incentive Payment.
- b. Change Orders. Payment for change orders shall not be made from HUD loan proceeds.
- c. Error in Plans and Specifications. Proceeds from the HUD loan shall not be used to pay for any costs arising from any inadequacies in project plans or specifications.

6-31. ARCHITECTS ADDITIONAL SERVICES FOR COMPETITIVELY BID PROJECTS.

- The project Architect shall furnish the construction cost estimates for firm commitment application, prepare the Project Manual, advertise for bids, issue bid documents to prospective Bidders and plan reading rooms, receive and publicly read bids, tabulate and evaluate bids, and advise the Owner on contract award.
- a. Ambiguities. The drawings and specifications shall be prepared with a view of leaving no ambiguities and permitting all Bidders to bid on an equal footing.
 - b. Proprietary Building Systems. The Architect may specify a proprietary building system which incorporates innovative technology. In such event the Architect shall prepare plans and specifications for an alternate system of construction which can be competitively bid. The plans and specifications for the proprietary system and its alternate must be equal in their general and detailed scope, and the bidding documents must provide that the owner will accept the lowest bid.

6-32. ESTIMATE OF CONSTRUCTION COST.

- a. Detailed Cost Estimate must include all work specified for construction -- identifying the material quantities for each phase of work, cost of materials, and cost of labor separated into the 16 divisions of the Uniform System for Specifications.

- (1) Cost estimates provided by a commercial service acceptable to the HUD Field Office may be used.
 - (2) Offsite work must be separately identified.
- b. Form FHA 2328, the Contractor's and/or Mortgagor's Cost Breakdown, shall be completed by the Architect, using the detailed estimate. If the project has more than one structure type, a Form FHA 2328 shall be completed for each and a summary Form FHA 2328 for all construction work.
 - c. Cost Estimate Projections shall be to the anticipated contract execution date in the project development schedule. Generally the contract execution date should be not later than five months after the application for Firm Commitment has been submitted.
- 6-33. PROJECT MANUAL. The project manual is an expansion of the technical specifications. It covers the form of bidding documents and the requirements governing activities which take place before the execution of the construction contract, and the form of construction contract documents (except drawings) which constitute the contract between the Owner and contractor. The project manual shall include the following documents in sequence:
- a. Title page; Table of Contents; Invitation for Bids; Instruction to Bidders; Form of Bid; Form of Bid Guarantee; Form of Affidavit of Non-Collusion/Non-Identity of Interest; Form of Previous Participation Certificate; Form of Contract Assurance; other sample Forms; (Contract Documents) Form of Construction Contract; General Conditions; Supplemental Conditions; Special Conditions; Davis-Bacon Wage Decision applicable to the project; and Technical Specifications.
 - b. Addenda are also part of the contract, but are separated from other documents in the project manual because they are issued after the Invitation for Bids.
- 6-34. FORM OF PROJECT MANUAL DOCUMENTS. The project manual shall be prepared using the following forms, specimen forms and criteria. Where specimen forms are modified because of local practice, they shall incorporate the listed mandatory information and be reviewed by Chief Counsel.

- (6-34) a. Title Page. The title page shall include the:
- (1) Project number and name
 - (2) Community or project location
 - (3) Architect's name, business address and phone number

- (4) Owner's name, business address and phone number
- b. Table of Contents. The table of contents shall index the bidding and contract documents bound into the project manual, including the technical specification sections and list of project drawings numbered and dated. Provisions Shall be made for indexing addenda in case any are issued during the bidding period.
- c. Invitation for Bids. Appendix 36 provides a specimen form of Invitation for Bids which may be modified to conform with local practices. Any Invitation for Bid shall include all of the following:
 - (1) Name of the Owner.
 - (2) Brief construction contract description, which shall always be a "single firm fixed-price contract."
 - (3) Brief project description to include:
 - (a) Project name
 - (b) Project location (i.e., community or city and State)
 - (c) Scope (e.g., general construction for 200 dwelling units, including appurtenant structures, landscaping and 200 yards of drainage ditch improvements)
 - (d) Type of construction (e.g., rehabilitation of an elevator structure).
 - (4) Estimate of Cost. Stated in terms of an approximate value of work. Rounding to a general figure within 10 percent of the estimated cost is acceptable, provided a contract would be awardable if a bid were submitted in the stated amount.

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- (6-34) (5) Place and time for receiving and publicly opening bids.
- (6) Location where bid and contract documents are on file and may be obtained on payment of a specified returnable deposit.
- (7) The requirement for a bid guarantee, in the form of a certified check or bank draft or satisfactory bid bond for 5 percent of the bid, to be submitted with the bid.
- (8) The requirement for assurance of completion which shall be in the form and amount specified in 24 CFR

Section 885.415(n).

- (9) Statement that the owner reserves the right to reject any or all bids and waive any informality.
- d. Instruction to Bidders. AIA Document A701, Instruction to Bidders, and Appendix 37, Supplement to AIA Document A701, Instruction to Bidders for Section 202 Projects.
- e. Bid Form. Appendix 38, Form of Bid, provides a specimen form of bid which may be modified to comply with local practices. Any Form of Bid must include:
 - (1) Project name.
 - (2) Bidder's name and address.
 - (3) A statement that the Bidder proposes to furnish all labor, materials, equipment and services required to construct and complete the project, as described in the Invitation for Bids (including the contents of all documents on file), for a specified lump-sum price.
 - (4) Bid Guarantee, (i.e., certified check, bank draft or bid bond in the amount of 5 percent of the bid).
 - (5) A statement of the period after the bid opening during which bid shall not be withdrawn without consent of Owner.
 - (6) A statement that Bidder shall, if notified of bid acceptance, execute a contract in the prescribed form and furnish the required assurance of completion at the HUD office __ (address) ____ at the date and time specified

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- (6-34) in the notification of bid acceptance. The date shall be no earlier than 10 days after notification of acceptance, nor later than the date stated in the Invitation for Bids, except by mutual consent of Bidder and Owner.
- (7) Bidder acknowledgement of amendments (addenda) to the Invitation for Bids.
- (8) Bidder certification that the bid is in strict accord with all terms of the Invitation for Bids (including the contents of all documents on file) and that the bid is signed by a person authorized to bind the Bidder.

f. Bid Guarantee.

- (1) The bid guarantee must be furnished with the bid in an amount equal to 5 percent of the bid and in the form of:
 - (a) a certified check or bank draft made payable to the Owner; or
 - (b) a satisfactory bid bond underwritten by an acceptable guaranty or surety company listed in the U.S. Treasury Department Circular No. 570.
- (2) Form of Bid Bond shall be AIA Document A310, Bid Bond.
- (3) Power of Attorney for the person signing for surety in the project area must be attached to the bond.
- (4) Duration of Bid Bond shall be specified as 60 days, unless a shorter bid holding period is contemplated under special circumstances.
- g. Form for Non-Collusive/Non-Identity of Interest Affidavit. Appendix 39 is a sample form for Non-Collusive/Non-Identity of Interest Affidavit.
- h. Previous Participation Certificate, Form HUD 2530.
- i. Contract Assurance Form. Contract assurance may be in the form of either a Performance and Payment Bond or a cash escrow. Forms for each shall be included in the Project Manual:

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- (6-34) (1) Form of Bond shall be Form FHA 2452-EH, Performance-Payment Bond (Dual Obligee), (Appendix 32).
- (2) Form of Cash Escrow shall be Form FHA 2450-EH, Completion Assurance Agreement, (Appendix 33).
- j. Contract Form. Form HUD 92442-(6/82), Construction Contract-Lump Sum.
- k. General Conditions. AIA Document A201, General Conditions of the Construction Contract.
- l. Supplemental Conditions. Form FHA 2554, Supplementary Conditions of the Contract for Construction.
- m. Special Conditions.
 - (1) Substitutions in the specified work shall be covered by the following statement in the Special Conditions: "Material and Workmanship. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name,

make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article or process, which, in the judgment of the Architect, is equal to that named. The Contractor shall furnish to the Architect for approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When required by its contract or when called for by the Architect, the Contractor shall furnish the Architect for approval, full information concerning the material or articles which the contractor contemplates incorporating into the work. When directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection. The form of Architect's approval shall be by AIA Document G710, Architect's Supplemental Instructions."

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- (6-34) (2) The Special Conditions shall contain no statement which conflicts with the General Conditions. If a conflict does occur, the General Conditions shall govern.
- n. Davis-Bacon Wage Determination. The appropriate wage determination for the project shall be made a part of the Project Manual. Since the Department of Labor wage determination may be effective for only 180 days from the date of such determination, the Architect must identify the anticipated date for execution of the contract to assure that wage rates in the Project Manual are valid on the date of contract execution.
- (1) "All actions modifying a project wage determination received by the agency (HUD) before contract award, or the start of construction where there is no contract award, shall be effective except as follows: In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency (HUD) less than 10 days before the opening of bids shall be effective unless the agency (HUD) finds that there is not a reasonable time still available before bid opening, to notify Bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator (Department of Labor) upon request. No such report shall be required if the modification is received after bid opening." (Federal

Register, Vol 48, No. 84/April 29, 1983, CFR 29 Section 1.6(c)(2)(i)).

- (2) If the contract has not been awarded within 90 days after bid opening, any wage changes published in the Federal Register prior to the award of the contract shall be effective with respect to the contract unless HUD requests and obtains an extension of the 90-day period from the U.S. Department of Labor.
- (3) Because of these requirements it is incumbent upon the Field Office to immediately notify the Architect of any changes in the wage determination.

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- (6-34) o. Technical Specifications. The specifications shall fully define the scope of construction or rehabilitation, and establish the quality of materials and workmanship. The specifications may be written in "performance" or "prescriptive" language. Special attention must be given to the following in order to promote competition, avoid ambiguities, and minimize contract disputes.
 - (1) Completeness. Each section of work must include the "scope of work," "workmanship," and "materials."
 - (a) Equipment may be specified by manufacturer and grade or model designation, or in performance terms. Where specified by manufacturer, three or more comparable products should be identified where practicable.
 - (b) Building Materials may be specified as meeting the industry accepted test control standard for basic classifications of materials, where it is customary and desirable. Brand names and comparables need not be identified for basic materials classifications specified by the industry norm.
 - (2) Ambiguities. General references to the Codes, MPS, UM Bulletins, and Material Releases are unacceptable. The Architect shall define project work in detail specifying that which is most suitable for the project.
 - (3) Substitutions. The Instructions to Bidders and Special Conditions shall provide for Architect-approved substitutions, where the contractor wishes to use an alternative to the equipment, material, article, etc., specified by trade name, make or catalog. The provisions shall establish the specified items as the standard of quality.
 - (4) Cash and Lump Sum Allowances are not allowed in the

specifications, since the contractor's responsibility would be limited to the dollar amount rather than the work required to complete the item.

- (5) Alternate Bids. Additive alternates shall not be permitted. If deductive alternates are specified, and such alternates are considered in making an award, alternates must be taken consecutively, e.g., 1, 2, 3, not 2, 1, 3.

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- 6-35. INCENTIVE PAYMENT AND LIQUIDATED DAMAGES. The Owner may offer an incentive payment for early completion of the contract, and shall require liquidated damages for late completion of the Contract. These shall be defined in the Invitation for Bids, and the Form of Contract in the Project Manual shall also reflect the amounts.
 - a. Incentive Payment for Early Completion of the Contract. When an incentive payment is offered, it shall be computed as specified in Form HUD 92443.
 - b. Liquidated Damages. Liquidated damages shall be expressed as an amount-per-day reduction in the contract price for delay in contract completion. Computation for liquidated damages shall be according to paragraph 7-7a(2) of this handbook.
- 6-36. INVITATION FOR BIDS. The Owner shall give full opportunity for open and competitive bidding by publicly advertising for sealed bids for a firm fixed-price contract and additionally soliciting bids from an adequate number of known contractors. The Owner will be responsible for the cost of the advertising which may be recovered from the organizational account in loan proceeds.
 - a. Eligible Bidders. Bidding shall be open to all contractors who furnish the security guaranteeing their bid in an amount equal to 5 percent of the bid in the form of a certified check, bank draft, or bid bond from an acceptable surety listed in the U.S. Treasury Circular 570.
 - b. Public Invitation. Publication of the Invitation for Bids shall be made by advertising at least once a week for two consecutive weeks in local newspapers of general circulation and trade journals, e.g., Dodge Reports.
 - (1) Minority contractors shall be further notified by furnishing a copy of the Invitation to minority media, local community based groups, and the local association of minority contractors and businesses meeting the criteria of 24 CFR Part 135, Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Projects.

- (2) Builder's exchange plan rooms, or similar service organizations nearest the project location, and local chapters of the Associated General Contractors and Associated Builders and Contractors, Inc., shall be given copies of the Invitation.

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- (6-36) (3) Copies of the Invitation furnished under (1) and (2) above shall be mailed or otherwise delivered within two business days of the date of the first publication of the Invitation.
- e. Solicitation. No fewer than six contractors shall be solicited to bid by mailing or otherwise delivering copies of the public advertisement under appropriate cover to their places of business. Solicitations described in this section shall not be made before the first public advertisement, nor later than two business days after the first advertisement. Solicitation does not preclude unsolicited contractors from bidding.
- (1) List of contractors to be solicited shall be prepared by the Architect and approved by the Owner. The Architect shall ask the local HUD office for a list of contractors who have expressed an interest in bidding or are known to have successfully completed similar work.
 - (2) Selection of contractors to be solicited shall be based on the contractor's ability to construct a project of the type, size, and complexity required; financial capacity; and integrity. In order to determine whether prospective contractors will be responsible individuals or organizations who will honor their legal, financial, and contractual obligations, a previous participation check and review of any adverse information that may otherwise be on file on the contractors will be made by the HUD Field Office. At a minimum, the Field Office's review will include a determination of whether or not the contractors are listed on the Consolidated List of Ineligible Contractors and Grantees.
- f. Bid Period. The Owner shall establish a deadline for acceptance of construction bids which allows enough time for Bidders to evaluate the bid package, estimate project construction costs, and submit their bids.
- (1) Minimum period shall be for the number of days required but not less than 30 calendar days from the first publication of the Invitation for Bids.

- (6-36) (2) Rebids may have a shortened bidding period appropriate to any changes made in drawings and specifications. Where determined appropriate by the Field Office, rebidding may be solicited directly from those contractors previously submitting bids, and need not be advertised publicly, provided:
- (a) Cost restrictions require only minor revision of plans or specifications to achieve an awardable contract, and
 - (b) Competition is assured by the number of contractors previously participating and indicating they are willing to rebid.
- (3) Bid opening date shall be extended if an addendum is issued within four calendar days of the scheduled opening date. In such instances, the bid opening shall be postponed for at least four calendar days from the date the addendum is published and delivered to the contractors.
- g. Deposits for Bid Package shall be a specific amount consistent with the cost of reproducing a copy of the package and shall be returnable in full for each set returned in good condition within 10 days after bid opening.
- (1) Builder exchange plan rooms or similar building service organizations, where subcontractors, material suppliers, and sales agents are accustomed to go for information and take-off quantities, shall not be charged a deposit where not customary.
 - (2) Deposit checks and drafts shall be made payable to the Owner and credited in the book of accounts for project development if not refunded.
- h. Control Record. The Architect shall maintain a record of the bidding documents. This record shall list the following for each individual or firm that requested a bid package:
- (1) Bid package control number.
 - (2) Name and address of individual or firm.
 - (3) If applicable, number of addenda and date sent.
 - (4) Amount of deposit and date received, including the

(5) Date and time bid was received.

(6) Date individual or firm was notified as to successful low Bidder.

6-37. ADDENDA. Addenda are written or graphic instruments issued during the bidding period which modify or interpret the bidding documents, including drawings and specifications, and become part of the contract documents when the construction contract is executed.

- a. Completion of Drawings and Specifications. Reliance upon addenda for the completion or correction of hastily or poorly prepared documents is unacceptable and shall not be tolerated.
- b. Changes to Bid Documents consisting of the Project Manual and Drawings shall be made by addenda.
- c. Interpretations. The bid documents are not to be interpreted by the Owner or Architect except by addenda. HUD staff shall refer all requests for interpretation of bid documents to the Architect.
- d. Identification and Distribution. Each addendum shall be numbered sequentially and a copy given to: each Bidder of record; each place where bidding documents are on file; and to the HUD Field Office. Delivery shall be by return-receipt registered mail or service for which receipt is documented by receiver's signature.
- e. HUD Review. Addenda should be post reviewed rather than prereviewed by HUD to save time and because most will be clarifications rather than substantive modifications. However, any addendum determined inappropriate by HUD shall be revised by a subsequent addendum.
- f. Revised Deadline. Each addendum shall state whether it extends the deadline date and/or time or leaves them unchanged.

6-38. BID OPENING. Bids shall not be opened until the date and time specified in the Invitation for Bids. Upon receipt of each bid (including late bids), the Architect shall mark the envelope with the date and time of receipt and the Architect's initials, then shall store it in a locked bid box, cabinet or safe until the designated bid opening time. The bids shall be opened in public and read aloud at the specified time and place by the Architect. The minimum information recorded in the Bid Tabulation

shall be as required in paragraph 6-42.a below. Bids received after the date and time specified in the Invitation for Bids

shall not be opened, but shall be returned to the Bidder with a letter indicating that the bid was not received by the deadline. An architectural representative of the HUD Field Office shall be present as an observer at the bid opening and shall file a memorandum: identifying the place and time bid opening began and late bids received; indicating by Bidder erroneous bids or requests for bid withdrawal; tabulation of bid; apparent low Bidder; and time bid opening ended.

6-39. THE LOWEST BIDDER shall be determined the lowest responsible Bidder if the Bidder:

- a. was responsive to the invitation for bids and properly completed the required submission,
- b. meets the requirements prescribed by HUD's Previous Participation Clearance Certificate, Form HUD 2530, and HUD review.
- c. is not listed in the Consolidated List of Ineligible Contractors and Grantees, and
- d. provides the prescribed bid guarantees.

6-40. BID WITHDRAWAL OR REJECTION. After the bid opening, the Owner shall not reject or disqualify any Bidder or allow any Bidder to withdraw a bid without the prior written approval from the HUD Field Office.

- a. Disqualification of Low Bidder. The Owner shall not disqualify the lowest Bidder without HUD Field Office approval.
 - (1) If the Owner has evidence that the low Bidder is not a responsible contractor who can perform successfully under the terms and conditions of the proposed contract, the Owner shall submit a recommendation and supporting documentation to HUD for review as part of the contractor's previous participation clearance. The Owner's submission would be based on such considerations as: contractor integrity; compliance with public policy; record of past performance; and financial and technical resources.

- (6-40)
 - (2) If the Owner recommends rejection of the lowest Bidder, the owner shall notify the Bidder of the reasons and provide the Bidder an opportunity to submit supporting evidence as to why the Bid should not be rejected. The Owner's documentation for rejection shall include the following for review and approval by HUD.
 - (a) A copy of the Owner's letter telling the Bidder why disqualification is recommended, and inviting

the Bidder to reply within 5 working days.

- (b) The Bidder's written reply explaining why the Bidder should not be disqualified.
 - (c) A letter from the Owner stating its objections to the low Bidder and its recommendation for an alternate award. The letter shall address any statements made by the low Bidder in support of an award to it.
- (3) HUD shall consider the Owner's recommendations and supporting documents during previous participation clearance and review of Form HUD 2530.
- b. Withdrawal Due to Error. If a Bidder seeks to withdraw a bid before the end of the bid holding period or the execution of the construction contract, the Owner shall submit the following for review and approval of the HUD Field Office.
- (1) A notarized statement from the Bidder that an error was made with an explanation of how it occurred.
 - (2) A copy of the Bidder's cost estimate worksheets or other evidence provided by the Bidder in support of the withdrawal request.
 - (3) A letter from the Owner to the HUD Field Office recommending approval or disapproval, including the reasons, of the Bidder's withdrawal request.
- c. Bidder Notification. Upon receipt of HUD's decision, the Owner shall notify the Bidder. If authorized by the Field Office, the Owner shall also return the bid guarantee to the Bidder.

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- (6-40) d. Default of Low Bidder. If the low Bidder fails to produce acceptable Performance and Payment Bond(s) or other prescribed form of surety, or refuses to accept the award of contract without acceptable verified justification, the Owner shall declare the bid guarantee forfeited. If such guarantee is in the form of a bond, the Owner shall notify the bonding company immediately.
- (1) Care shall be taken not to reject the bid, since such actions would cancel the bid guarantee and prevent recovery.
 - (2) The amount recovered should equal at least the difference between the defaulted bid and the next lowest acceptable bid, or the amount by which the bid accepted following readvertising exceeds the defaulted bid.

- (3) The bid guarantee amount recovered shall be applied to the loan amount.
- e. Rejection of All Bids. The Owner may recommend and/or HUD may require, rejection of all bids because bids received are too high or for other justifiable causes. The Owner shall first obtain written authorization from the Field Office Manager. The Owner, Architect and Field Office staff shall review the bids to evaluate the reason why a construction contract cannot be awarded. The review shall determine whether the bid amount would:
- (1) cause per unit cost limits to be exceeded,
 - (2) cause debt service limits to be exceeded,
 - (3) exceed the construction budget,
 - (4) indicate that the project is overdesigned,
 - (5) indicate unreasonably high costs due to unusual circumstances temporarily affecting construction in the area, or
 - (6) the bid cannot be accepted for other identified causes.
- f. HUD Cost Limits. If the per unit cost limits, debt service limits or construction budget are incorrect, the Field Office shall promptly correct them before the bidding period expires.

- g. Overdesign. If HUD determines that bids are excessive because of overdesign, the Owner, Architect, and Field Office shall identify design modifications likely to result in lower bids.
- h. Readvertisement for Bids. Upon approval of the revised construction documents, and reissuance of the firm commitment by the field, the Owner shall be authorized to issue a new Invitation for Bids.
- 6-41. BID PROTESTS. Any protest filed with the Office arising from the award or proposed award of a contract which cannot be resolved shall be referred to the Regional Administrator for resolution. In rendering a decision, the Regional Administrator shall be guided by the regulations governing the award of contracts by competitive bidding procedures as set forth in Federal Acquisition Regulations, and by previous decisions rendered by the Comptroller General of the United States pursuant to such regulations. The Regional Administrator shall render his/her decision promptly and shall file a copy of the decision with the Assistant Secretary for Housing. Any appeal of the Regional Administrator's

decision shall be made to the Assistant Secretary.

6-42. OWNER SUBMISSION OF PROPOSED CONTRACT AWARD DOCUMENTS. As soon as possible but not more than 10 working days after bid opening, the Owner shall send the following documents as well as any other pertinent information for Field Office approval of the contract award.

- a. Bid Tabulation shall identify the following for each bid received.
 - (1) the name and address of Bidder,
 - (2) the amount of the bid, and
 - (3) the amount and type of bid guarantee.
- b. Proposed Bid. A letter from the Owner to the Office Manager advising of the bid (by Bidder name and bid amount) recommended for award of contract. A conformed copy of the bid, including Non-Collusive/Non-Identity of Interest Affidavit, and Form HUD 2530 are to be included with the letter. The Owner's submission shall also include the following, as applicable:

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- (1) If the Owner proposes to accept other than the lowest bid, a copy of the Owner's and contractor's letters and statement pursuant to paragraph 6-39a(2)
 - (2) If the lowest bid is irregular, but the Owner proposes to accept it nonetheless, the Owner shall include a statement identifying the discrepancies in the bid and setting forth the Owner's reasons for not disqualifying the bid.
- 6-43. HUD REVIEW OF CONTRACT AWARD DOCUMENTS. The contract award documents shall be reviewed by the Housing Division before being sent to Chief Counsel for use in Initial Closing.
- a. PC&R Unit shall:
 - (1) Log and send the documents to the reviewing sections and
 - (2) Begin previous Participation clearance review.
 - b. Architecture and Engineering Section. The assigned design representative and cost analyst shall review the contract award documents to ascertain that the bid which the Owner proposes to accept is:
 - (1) The lowest bid, or if not the lowest bid, that the

Owner's supporting documentation is acceptable. A&E findings concerning the Owner's request for disqualification of the low Bidder must be sent immediately to the Director for Housing Development for consideration in the review of Form HUD 2530.

- (2) Consistent with the Owner's Invitation for Bids and bid package, including any addenda, previously approved by the Field Office.
- (3) In an amount consistent with the construction budget.

If the above criteria are met, A&E shall initiate a Form HUD 92264, Rental Housing Project Income Analysis and Appraisal, reflecting the actual bid amount.

- c. Valuation Branch shall complete Section G, Form HUD 92264, reflecting the actual bid amount.
- d. Mortgage Credit Section shall:

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- (6-43)
 - (1) Review the Bidder's Form HUD 2530.
 - (2) Complete processing of Form FHA 2264A.
- e. Director Housing for Development shall:
 - (1) Coordinate the contract award document review, and forward the documents and revised Forms HUD 92264 and Firm Commitment reflecting actual bid amount to the Chief Counsel for use in the Initial Closing.
 - (2) Send a letter to the Owner advising of the approval of the Owner's recommendation for contract award; send the Owner the revised Firm Commitment if necessary; and provide instructions for:
 - (a) Execution of contract documents.
 - (b) Initial Closing.
 - (c) Date of pre-construction conference.
 - (3) If the lowest responsible bid is too high to permit award of a construction contract, the Owner shall be advised to meet with the Architect and the Chief of A&E Section to review the project for possible cost reduction.
 - (a) If a reduction in cost by less than half a percent of the bid and less than half the difference between the lowest and next lowest bid would

result in an acceptable mortgage amount and is otherwise satisfactory to the Owner, Bidder and HUD, a deductive change order reducing project requirements and cost shall be drafted (and appropriate supporting exhibits prepared) for concurrent execution with the contract.

- (b) If a redesign is required, the Director for Housing Development shall identify its extent and establish a schedule for completing work and readvertising.
- (c) If the project per unit cost limits, debt service limits or construction budget are incorrect, they shall be corrected.

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- (d) If more time is required for revisions or corrections, the Owner shall be advised to secure from the apparent low responsible Bidder an extension of the bid holding period.

6-44. CONTRACT AWARD. Upon receipt of the letter of instruction for execution of the construction contract from the Director for Housing Development, the Owner shall send the successful Bidder a registered letter stating:

- a. Date and Time scheduled for execution of the construction contract at the HUD Field Office.
- b. Form FHA 2328, Contractor's and/or Mortgagor's Cost Breakdown, shall be submitted within 5 days of this notification and that it shall satisfy General Conditions requirement for a schedule of values.
- c. Performance - Payment Bond issued by a firm listed in the U.S. Treasury Department Circular No. 570, or cash escrow specified in the Instructions to Bidders, shall be presented at or before contract execution.
- d. Power of Attorney shall be provided with the bond(s), and the bonds shall be dated no earlier than construction contract execution.

6-45. DEPARTMENT OF LABOR NOTIFICATION. Within 10 calendar days of contract award (including subcontracts) for each construction contract of \$10,000 or more, the Director for Housing Development shall send a notice of contract award to the Regional Office of Federal Contract Compliance Programs of the Department of Labor. This notification is required by Executive Order 11246 and shall include:

- a. the name, address, and telephone number of the contractor,

- b. the employer identification number,
- c. the dollar amount of the contract,
- d. the estimated construction start and completion dates, and
- e. the project number and community in which the project is being built.