

ALASKA STATE COURTS  
COMPLIANCE UNIT  
1987-1988

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SB 341 (FILE 1)  
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each group of eligible projects. For each project in Group 1, the Field Office shall prepare a brief narrative, justifying each project's inclusion in the group and providing its evaluation of each project against factors (1), (4) and (7) in subparagraph e. For each project in Groups 2 and 3, the Field Office shall prepare a brief narrative, justifying each project's inclusion in the group and providing its evaluation of each project against factors (1) through (8) in subparagraph e. If requested by the Regional Office, the Field Office shall list the projects within Groups 2 and 3 in priority order. The Field Office also shall indicate any PHA identified by FH&EO as being in nonconformance or noncompliance and any project which is the second or subsequent stage of a two- or multi-stage comprehensive modernization. The Field Office shall forward to the Regional Office the three lists and related narratives.

- h. Regional Office Selections. The Regional Office shall review the lists and related narratives submitted by all Field Offices under its jurisdiction and select PHAs/projects and types of modernization for Joint Review. In making its selections, the Regional Office shall give preference to projects in Groups 1 and 2. The Regional Office shall notify in writing the Field Offices of its selections.
- i. Funding Targets. Although the Regional Office is responsible for funding decisions, the Regional Office may establish funding targets for Field Offices based on its knowledge of the needs and conditions within the Region. Where established, these targets may increase or decrease throughout processing as the Regional Office makes the preliminary and final funding decisions.
- j. Letter to PHA. After the Regional Office selections for Joint Review, the HMO shall prepare a letter to the PHA for the signature of the Field Office Manager, advising whether the PHA will be considered for funding in the current FFY, as follows:
- (1) Where the PHA will be considered for funding in the current FFY, the letter shall: confirm the date of the Joint Review, if already scheduled, indicate an intent to schedule the Joint Review as soon as possible, or state that the requirement for the Joint Review is being waived under paragraph 3-7; state which project(s) for which type(s) of modernization will be reviewed and request that the PHA contact the Field Office if the PHA disagrees with the defined scope of the Joint Review;

outline required PHA activities to prepare for the Joint Review; and list outstanding monitoring findings or issues which must be resolved if the PHA is subsequently invited to submit a Final Application.

- (2) Where the PHA will not be considered for funding in the current FFY, the letter shall state the reasons, such as the relatively low priority of its physical improvement needs. Where the reason is lack of management or modernization capability, the letter shall state the specific deficiencies and what actions the PHA will have to take or what level of management or modernization capability the PHA will have to achieve by a specified time to be considered for funding in a subsequent FFY.

3-7. SCHEDULING AND WAIVER OF JOINT REVIEWS.

- a. Scheduling. The Modernization Coordinator is responsible for coordinating the scheduling of the Joint Reviews. The HMO shall check with the Modernization Coordinator before contacting the PHA about a tentative date or establishing a firm date for the Joint Review.
- b. Waiver. The Regional Office may waive the requirement for a Joint Review only where special purpose, emergency or home-ownership modernization is involved if the Field Office has current knowledge of the specialized need(s) and proposed physical improvement(s). The Regional Office may not waive the requirement for a Joint Review where comprehensive modernization, including the second or subsequent stage, is involved.

3-8. PHA PREPARATION FOR JOINT REVIEW. The PHA shall prepare for the Joint Review by taking the following actions:

- a. Reach agreement with the Field Office on the specific project(s) to be covered during the Joint Review.
- b. Consult with tenants/homebuyers as required in Chapter 5.
- c. Complete a detailed comprehensive assessment of the total physical and management improvement needs of the project(s) for which the PHA is requesting comprehensive modernization and of the specialized needs of the project(s) for which the PHA is requesting special purpose, emergency or home-ownership modernization in the current FFY, as follows:

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- (1) Form HUD-52821, Project Profile, providing pertinent management information on each project for which comprehensive modernization is requested in the current FFY. This form is not required for projects proposed for special purpose, emergency or homeownership modernization. A sample Form HUD-52821 is attached as Appendix 9. The form provides instructions on which items may be omitted for a project where the PHA has 100 or less units in management. The Project Profile assists the PHA in assessing and analyzing its management operations at each project, identifying management problems, and formulating the management improvements which require identification on Form HUD-52825, Comprehensive Assessment/Program Budget.
- (2) Part II of Form HUD-52825, Comprehensive Assessment/Program Budget. Complete instructions for preparation of the form are contained in Appendix 10. For projects to be comprehensively modernized, the comprehensive assessment includes both physical and management needs assessment, as follows:
- (a) Physical Needs Assessment. This includes an identification of the project's current physical condition and the physical improvements necessary to meet the mandatory standards, set forth in the Public Housing Modernization Standards Handbook 7485.2 REV-1. The PHA that lacks the in-house capability to perform the assessment should contact the Field Office. In such cases, the Field Office may advise the PHA to hire an outside architect/engineer, subject to reimbursement only if the comprehensive modernization is approved, or that the Field Office will perform the assessment for the PHA during the Joint Review. The Field Office may encourage small PHAs to group together for purposes of hiring outside assistance.
- (b) Management Needs Assessment. This includes an identification of all current management improvement needs, as assessed against the management areas set forth in paragraph 2-2b. Many management deficiencies require little or no additional funds to correct. Regardless of whether modernization funds are required for correction, the PHA shall include any management items identified on the Project Profile or by the PHA as problems or for which the PHA is requesting funding

for correction. For designated Financially Troubled PHAs, management improvement needs shall be consistent with those identified in their Financial Workout Plans.

- d. Conduct an energy audit on each project proposed for comprehensive, special purpose or homeownership modernization. Guidelines for identifying cost-effective energy conservation measures and for conducting energy audits are set forth in the HUD Workbook (HUD-PDR-700(3)). If an acceptable energy audit is not conducted, the Field Office shall not recommend the project for further processing.
- e. Review the other points to be covered during the Joint Review as set forth in paragraph 3-11.

### 3-9. FIELD OFFICE PREPARATION FOR JOINT REVIEW.

- a. Notification to FH&EO. As soon as the Joint Review has been firmly scheduled, the HMO shall notify the FH&EO Division of the proposed date and invite its participation. Where the FH&EO Division is unable to participate in the Joint Review, it may inform the AHM staff in writing of its specific concerns.
- b. AHM Branch Participation. In all cases where comprehensive modernization is proposed, the HMO and the Maintenance Engineer shall represent the Field Office on the Joint Review. Based upon PHA size and prior knowledge of PHA management problems, other AHM staff, as appropriate, shall participate in the Joint Review. In all cases, the HMO shall serve as the team leader of the Field Office representatives.
- c. Review of Files. In preparing for the Joint Review, the Field Office representatives shall review the PHA's file(s), with special attention to open findings from the latest fiscal audit, management review, occupancy audit, engineering survey and utilities review. If the fiscal audit is overdue, the Field Office shall suspend further processing until the PHA has initiated the audit. Field Office representatives should be thoroughly familiar with the status of all previously approved modernization programs and the overall operation of the PHA.
- d. Confirmation with PHA. Before the Joint Review, the HMO shall check with the PHA to confirm that the PHA is ready

for the Joint Review, i.e., has taken all of the actions required in paragraph 3-8. If the PHA is not ready, the HMO shall cancel the Joint Review and provide a revised date by which time the PHA must be ready.

3-10. PURPOSE, CONDUCT AND DURATION OF JOINT REVIEW.

- a. Purpose. The purpose of the on-site Joint Review is to discuss the proposed modernization program, as set forth in the Preliminary Application and the comprehensive assessment, and reach tentative agreement on PHA needs.
- b. Initial Meeting. The Field Office and the PHA representatives should meet briefly to discuss the prearranged agreements concerning the scope of the Joint Review, PHA staff availability and other logistical matters. They also should review the documents prepared by the PHA under paragraph 3-8c and discuss how the proposed management improvements, if any, relate to the proposed physical improvements, the appropriateness of work items and project priorities, and the degree of cost benefits.
- c. Duration. The duration of the Joint Review will vary in time, depending upon factors, such as PHA size and management capability, type and complexity of the proposed modernization program, Field Office knowledge of and familiarity with the PHA's operations and management practices, status of any previously approved modernization programs, and extent to which the findings of the Joint Review would duplicate the open findings of a fiscal audit, management review, occupancy audit, engineering survey or utilities review conducted within the preceding 12 months.
- d. Close-Out Meeting. The Field Office and the PHA representatives should meet to discuss HUD's preliminary findings and recommendations on the proposed modernization program, including whether one-stage or two-stage comprehensive modernization under paragraph 3-12 is appropriate for each project reviewed. The close-out meeting shall include specific treatment of previously approved modernization programs not completed within the prescribed time frames (see paragraph 7-2) and an agreed upon schedule for completion and fiscal closeout. Where appropriate, the Field Office representatives also may meet with the PHA Board of Commissioners.

- 3-11. JOINT REVIEW COVERAGE. The Joint Review shall include an on-site inspection of the property and resolution of the

following points. The Field Office shall document the Joint Review by using the Joint Review Checklist in Appendix 11. The Field Office may modify the Checklist, by adding additional information, where appropriate.

- a. Based on the detailed comprehensive assessment(s) undertaken in paragraph 3-8c, specific physical improvement needs to be addressed in the modernization program, including cost estimates, proposed implementation schedule, method of accomplishment (contract or force account), and method of PHA inspection of the physical work. In addition, the PHA's determination of whether the proposed comprehensive or special purpose modernization is financially feasible and will result in long-term physical and social viability at the project, as well as the PHA's estimated cost benefits, shall be reviewed. The need for and the appropriateness of the physical work items shall be reviewed against the Modernization Standards, the energy audit and the individual needs of each project (see paragraph 2-1). The use of force account labor shall be considered only on an exception basis, where appropriate to the scope and type of physical improvements and the PHA's capacity to serve as its own main contractor and to maintain an adequate level of routine maintenance during force account activity.
- b. Based on the detailed comprehensive assessment(s) undertaken in paragraph 3-8c, the thoroughness of the PHA's diagnosis in identifying management problems, causes and solutions, and specific management improvement needs, including those which require no funding, to be addressed in the modernization program, and the proposed implementation schedule and cost estimates for completing proposed management improvements. The need for and the appropriateness of the management work items shall be reviewed against the criteria set forth in paragraph 2-2. Although the PHA is not required to prepare the detailed comprehensive assessment of management improvement needs for projects proposed for special purpose, emergency or homeownership modernization, the Field Office may discuss such needs with the PHA during the Joint Review and subsequently require the PHA to address those needs in the Final Application.
- c. PHA need for the technical services of an architect/engineer and/or a management consultant in further planning, designing and implementing all or part of the proposed physical and management improvements. See paragraph 2-6a(2) regarding incurring architectural/engineering fees for detailed design work before program approval.

- d. PHA plan for organizing and staffing the modernization program, including PHA need for a full-time modernization coordinator or contract administrator/construction manager, assignment of regular PHA staff, and hiring of additional personnel (see paragraph 7-3).
- e. PHA performance in administering previously approved modernization programs, if applicable (see paragraph 7-2).
- f. PHA need for additional modernization funds to complete previously approved modernization programs (see paragraph 3-13).
- g. PHA compliance with requirements for consultation with local officials and tenants/homebuyers under paragraph 3-5b and Chapter 5 and local support for the proposed modernization. If it is questionable whether a project has local support or, once modernized, will have long-term physical and social viability, the Field Office shall require the PHA to consult more thoroughly with local officials, including obtaining a letter of support from local officials before the preliminary funding decisions.
- h. PHA compliance with civil rights statutes, executive orders and regulations, as applicable, under paragraph 6-1.
- i. PHA plans to provide minority and women's business or Indian enterprise opportunity under paragraph 6-2.
- j. Applicability of environmental and historic preservation requirements under paragraph 6-3.
- k. PHA compliance with flood insurance requirements under paragraph 6-4.
- l. PHA compliance with requirements to eliminate immediate lead-based paint hazards under paragraph 6-5.
- m. PHA compliance with requirements to provide accessibility for the physically handicapped under paragraph 6-6.
- n. PHA compliance with requirements to conduct an energy audit and undertake cost-effective energy conservation measures under paragraph 6-7.

3-12. COMPREHENSIVE MODERNIZATION APPROACH. After the Joint Review, the Regional and Field Offices shall consider one- or two-stage

funding. The proposed comprehensive modernization of a project shall be funded in one stage, unless the Regional and Field Offices determine, based upon the criteria set forth in subparagraph b, that it shall be funded in two stages.

- a. One-Stage Funding. In general, comprehensive modernization will be funded in one stage. Under one-stage funding, the total amount of modernization funds for all required physical and management improvements at the project shall be approved at one time, out of funds for a single FFY, under one Final Application.
- b. Two-Stage Funding. On an exception basis, comprehensive modernization will be funded in two stages. Under two-stage funding, the total amount of the modernization funds for all required physical and management improvements at the project shall be approved at two different times under two different Modernization Projects.
  - (1) Mandatory. Where the Regional Office determines that the PHA lacks modernization capability, as defined in paragraph 1-3, the Regional Office shall fund comprehensive modernization in two stages. At the first stage, approval is limited to funds for architectural/engineering work and a portion of the management improvements, where appropriate.
  - (2) Optional. Where the Regional Office determines that the PHA lacks management capability, as defined in paragraph 1-3, or that the magnitude of the total funds required for the comprehensive modernization is such that one-stage funding is precluded by the Regional Office's allocation, the Regional Office may fund comprehensive modernization in two stages. At the first stage, approval may include funds for architectural/engineering work and a portion of the physical and management improvements.
  - (3) First Stage. The first stage shall be approved out of funds for a single FFY, under one Final Application. The Final Application shall address all required physical and management improvements at the project by PHA submission of a separate Part II of Form HUD-52825. This separate Part II of Form HUD-52825 is submitted in addition to Form HUD-52825 (Parts I-II) which shall pertain only to work items to be funded at the first stage. When approving the first stage, the Regional Office shall indicate the approximate balance of the

modernization funds to be approved for the project at the second stage and its intent to approve that balance, subject to the availability of future funds, satisfactory progress by the PHA in obligating the first stage funds, PHA submission of additional documents as set forth in subparagraph b(4), and PHA compliance with HUD regulatory and statutory requirements.

- (4) Second Stage. Where the PHA is requesting funding for the second stage of a two-stage Comprehensive Modernization at a project, the Regional Office shall determine whether the PHA has made satisfactory progress in obligating the first stage funds. If not, the Field Office shall not approve the second stage for funding at this time. The PHA submission for the second stage is limited only to the items set forth in paragraphs 3-16b(1), c, and e and an update of other items as deemed necessary by the Regional and Field Offices. Form HUD-52825 shall pertain only to work items to be funded at the second stage.
- c. Multi-Stage Funding. Where the magnitude of the total funds required for the comprehensive modernization is such that two-stage funding is precluded by the Regional Office's allocation, the Regional Office may submit its recommendation for approval to Headquarters for consideration. The recommendation should be forwarded to Headquarters before fund reservation for the first stage.
- d. Up-Front Funding of Planning Costs. Where a financially distressed PHA requests up-front funding of planning costs, as defined in paragraph 2-6, for comprehensive modernization, the Regional Office may approve such costs as a separate Modernization Project. Such approval does not constitute a separate funding stage and may occur in a different FFY from when the comprehensive modernization is approved. The Final Application shall be limited to Form HUD-52825 covering only the planning costs to be funded and the Board Resolution. When approving planning costs as a separate Modernization Project, the Regional Office shall indicate the estimated total funding that will be required for the project and its intent to approve that amount, subject to the availability of future funds, satisfactory completion of the planning, PHA submission of the Final Application as set forth in paragraph 3-16, and PHA compliance with HUD regulatory and statutory requirements.

- e. Treatment of Scattered Site Projects. Since a scattered site project is composed of single dwelling units which are unrelated geographically, structurally or socially and which are grouped together solely for accounting purposes, the Regional Office may consider comprehensive modernization for selected units within a scattered site project, provided that all physical and management improvement needs for those units are addressed.
- f. Treatment of Contiguous Projects. Two or more separate, but contiguous, projects may be funded together for comprehensive modernization.

3-13. ADDITIONAL FUNDS FOR PREVIOUSLY APPROVED COMPREHENSIVE MODERNIZATION. Under the following circumstances, the Regional Office may approve additional funds for projects previously approved for comprehensive modernization. However, this flexibility may not be used to circumvent the statutory requirements for the PHA to undertake a thorough assessment of its physical and management improvement needs and for the Field Office to review those assessments and fund modernization in a comprehensive manner.

- a. Comprehensive Modernization in Progress. For one-stage or second of two-stage comprehensive modernization in progress, the Regional Office may approve additional funds to ensure that the project meets the Modernization Standards or will have long-term viability. This includes funding for new work items which were inadvertently omitted or for previously approved work items which were funded inadequately, provided that:
- (1) the work items are necessary to meet the Modernization Standards or for long-term viability;
  - (2) funding is not available from PHA operating funds or reserves or other sources;
  - (3) the work items can be completed within the originally approved implementation period for the project; and
  - (4) there is documentation, subject to post-review by Headquarters, in Field Office files as to the reason for approval and that all the above conditions have been met.
- b. Comprehensive Modernization Completed. Until the replacement reserve is implemented, the Regional Office

may approve emergency or special purpose modernization for a project where comprehensive modernization has been completed.

3-14. PRELIMINARY FUNDING DECISIONS.

a. Cost Benefits.

- (1) It is recognized that it may be difficult to accurately determine cost benefits for any type of modernization. However, it is easier to determine the long-term cost benefits for special purpose modernization and energy conservation work under comprehensive and homeowner-ship modernization due to the relatively hard data available for energy items. This determination is more difficult for non-energy conservation work under comprehensive and homeownership modernization.
- (2) In determining the cost benefits for these types of modernization, the Field and Regional Offices shall consider the long-term cost benefits from improved habitability that will result from the non-energy physical improvements and the management improvements. Cost benefits from improved habitability may occur, for example, through prevention of unit turnover and vacancies, replacement of non-serviceable systems, equipment or materials, use of more durable materials, reduction in insurance or maintenance costs, improved security and reduced vandalism or increased efficiency of personnel and management systems. The Field and Regional Offices shall make every effort to ensure that these long-term cost benefits are identified and included for purposes of evaluation.
- (3) It is HUD's intent to follow through and fund the second or subsequent stages of two- or multi-stage comprehensive modernization to permit the PHA to complete the modernization of the project, subject to cost benefit ranking. However, where the second or subsequent stage does not rank high enough to be funded, the second stage should be ranked as if the entire application (i.e., all stages) were being considered for funding.

- b. Field Office Ranking. After all Joint Reviews have been conducted, the Field Office shall again batch all projects proposed for modernization into the three groups set forth in paragraph 3-5c. After batching, the Field Office shall rank each project within Groups 2 and 3 by its ability to

effect cost benefits. In the event that projects are ranked equally, further priority shall be given to projects with large family units.

- c. Field Office Recommendations. After ranking, the Field Office shall forward its recommendations for preliminary funding decisions to the Regional Office, as well as any State comments under paragraph 3-6d. The recommendations shall consist of three lists, one for each group of projects. For Group 1, the projects shall be listed in no priority order. For Group 2, the projects shall be listed in priority order with the project having the highest cost benefits being ranked as priority 1. For Group 3, the projects shall be similarly listed in priority order. The Field Office shall indicate any PHA still identified by FH&EO as being in nonconformance or noncompliance and any project which is the second or subsequent stage of a two- or multi-stage comprehensive modernization.
- d. Regional Office Decisions. The Regional Office shall familiarize itself with the proposed modernization to the maximum extent possible. At a minimum, the Regional Office shall meet with each Field Office to review its funding recommendations. After the Regional Office has thoroughly analyzed all Field Office recommendations and decided which projects receive preferential treatment in either Group 1 or Group 2, it shall make the preliminary funding decisions, based upon the ranking of the projects by cost benefits. The Regional Office shall notify in writing the Field Offices of its preliminary funding decisions, i.e., which PHAs are invited to submit Final Applications.

3-15. FIELD OFFICE LETTER REPORT. After the preliminary funding decisions, the HMO shall prepare a Letter Report to each PHA for the signature of the Field Office Manager in consultation with other AHM staff, inviting the PHA to submit a Final Application or informing the PHA of the reasons why it is not being invited to submit a Final Application. Where the PHA is being invited to submit a Final Application, the Letter Report shall include the following:

- a. Identify projects, types of modernization and funding amounts which may be approved for modernization funding in the current FFY, subject to PHA submission of an approvable Final Application and availability of funds.
- b. For each project, identify any required revisions to the comprehensive assessment, prepared for the Joint Review, including the addition, modification or deletion of specific

physical and management work items; and identify those physical work items, if any, that exceed the Modernization Standards and, therefore, must be individually justified.

- c. Provide other advice and guidance on preparation of the Final Application, such as understandings reached on the organization and staffing of the modernization program, the method of accomplishment and the project implementation schedule.
  - d. Address any PHA request to proceed with procurement of architectural/engineering services for work which is likely to get funded in the current or a subsequent FFY (see paragraph 2-6a).
  - e. Specify actions, if any, recommended by the Regional FH&EO Compliance Division that must be taken within a specified time to correct any outstanding HUD findings of non-compliance with civil rights statutes, executive orders and regulations.
  - f. Specify the submission date of the Final Application.
- 3-16. PHA SUBMISSION OF FINAL APPLICATION. Following the advice and guidance contained in the Field Office Letter Report, the PHA shall prepare and submit the following documents in an original and three copies (or any lesser number of copies as specified by the Field Office) to the Field Office, Attention: Chief, AHM Branch. These documents constitute the Final Application:
- a. For each project, an identification of and an estimate of the total costs of replacement of the equipment, systems or structural elements which would normally be replaced (assuming routine and timely maintenance is performed) over the remaining period of the ACC or during the 30-year period beginning on the date of submission of the Final Application, whichever period is longer. This estimate shall include an estimate of such costs accrued for the period which ends upon the date on which the Final Application is made and an estimate of the costs which will accrue during each 12-month period subsequent to the Final Application. The estimate should be based on current costs without taking inflation into account.
  - b. A comprehensive assessment of physical and management improvement needs and a plan for making the improvements and replacements and for meeting the needs which include:

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- (1) Form HUD-52825, Comprehensive Assessment/Program Budget (Parts I-II). Complete instructions for the preparation of Form HUD-52825 are contained in Appendix 10. A completed sample of the form is attached as Appendix 10 and may be used as a guide in preparation.
  - (2) Form HUD-52823, Project Financial Forecast. Complete instructions for the preparation of Form HUD-52823 are contained in Appendix 12 along with a sample of the form.
- c. Modernization Organization and Staffing Plan, stating the proposed organization, staffing and inspection of the modernization program and including the following:
- (1) Whether a separate modernization unit has been or will be established within the PHA and the proposed duration of the unit; if so, the relationship of the unit to the existing organizational structure of the PHA.
  - (2) The staffing of the modernization unit or function; number, titles and salaries of technical and non-technical PHA personnel to be assigned full-time or part-time to modernization, and additional personnel to be hired; designation of a modernization coordinator or contract administrator/construction manager, if necessary and lines of authority.
  - (3) Plans for periodic inspections by an architect/engineer, independent contractor or PHA staff to ensure work quality and progress.
- d. PHA Report, on compliance by the local governing body with the terms of the Cooperation Agreement, or as embodied by Article VIII of the Tribal Ordinance as applicable for certain IHAs, and any additional services or facilities that the PHA plans to request from the local governing body.
- e. Resolution by the PHA Board of Commissioners. Where necessary, the PHA may delay submission of the Resolution up to the time when the final funding decisions are made. The Resolution shall approve the Final Application and certify that:
- (1) The PHA will comply with all policies, procedures and requirements prescribed by HUD for the modernization, including implementation of the modernization in a timely, efficient and economical manner;

- (2) The estimated costs of the modernization program cannot be funded from current operating funds or reserves;
- (3) The proposed physical work meets the Modernization Standards or, if exceeds the Modernization Standards, is essential for long-term physical and social viability at the project;
- (4) The PHA has complied with tenant/homebuyer consultation requirements under Chapter 5;
- (5) The PHA shall comply with applicable civil rights requirements under paragraph 6-1 and 24 CFR 868.9a;
- (6) The PHA has adopted the goal of awarding at least 20 percent of the dollar value of the total of the modernization contracts, to minority business enterprises under paragraph 6-2 and 24 CFR 868.9b;
- (7) The PHA has complied with applicable environmental requirements under paragraph 6-3;
- (8) The PHA has furnished a copy of the flood insurance policy to HUD or determined that flood insurance is not required under paragraph 6-4;
- (9) The PHA has complied with applicable requirements for lead-based poisoning prevention under paragraph 6-5;
- (10) The PHA has complied with applicable requirements for the physically handicapped under paragraph 6-6; and
- (11) Where the proposed modernization involves the temporary or permanent rehousing of tenants, the PHA will ensure nondiscrimination in the selection of tenants to be rehoused, determination of which tenants require temporary and permanent rehousing, assignments of tenants within the PHA and provision of assistance to tenants being rehoused.

f. Special Provisions For Excepted Categories.

- (1) Special Purpose Modernization. For a project under special purpose modernization, the PHA shall limit the items required in subparagraph b(1) to only those special purpose work items.

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- (2) Emergency Modernization. For a project under emergency modernization, the PHA shall omit from the Final Application the items required in subparagraphs a, b(2), c and d and limit the items required in subparagraph b(1) to only those emergency work items.
- (3) Homeownership Modernization. For a project under homeownership modernization, the PHA shall omit from the Final Application the items required in subparagraphs a and b(2) and limit the items required in subparagraph b(1) to only those homeownership work items. The PHA shall include in the Final Application a listing of the units to be included in the modernization program and the estimated cost attributed to each home.

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CHAPTER 4. FINAL APPLICATION REVIEW AND APPROVAL

4-1. TECHNICAL REVIEW.

- a. Routing. After the Final Application has been logged in, the Housing Management Officer (HMO) shall check the application to determine that all required documents are included. The HMO shall simultaneously route copies of the Final Application to the Fair Housing and Equal Opportunity (FH&EO) Division, the Maintenance Engineer, the Financial Management Specialist (FMS), and the Occupancy Specialist, as appropriate, and shall establish a deadline for completion of the technical review. If technical reviews are not completed within the time frame, the review responses shall be marked "no comment."
- b. Technical Review. Each specialist shall review the Final Application from the standpoint of his/her functional responsibilities, while taking into consideration the requirements of the Field Office Letter Report, and shall evaluate whether or not the proposed modernization is financially feasible and will result in the project's long-term physical and social viability.
  - (1) General Management. The HMO shall evaluate the PHA's capability to implement and complete the proposed program, the adequacy of the PHA's plan to organize and staff the modernization function and to meet all identified management improvement needs, and the eligibility of and need for all proposed work items. The HMO shall evaluate the adequacy of the PHA's plan to meet any identified management improvement needs relating to tenant and community services, including employment, and of the PHA's arrangements for the operation of any proposed community space. The HMO shall conduct the appropriate environmental review, where required under paragraph 4-2.
  - (2) Maintenance. The Maintenance Engineer shall evaluate the eligibility, need and cost benefits of proposed physical work items, the reasonableness of the time frames for completion of the physical work items, the accuracy of the cost estimates, the feasibility of the proposed method of accomplishment (contract or force account), the adequacy of the PHA's plan for inspection of the physical work, and the financial feasibility of the proposed modernization. The Maintenance Engineer shall ensure that the energy audit is of acceptable quality and that eligible energy conservation

opportunities, identified by the audit, have been included in the Final Application. The Maintenance Engineer shall evaluate the PHA's justification for any physical work items exceeding the Modernization Standards (see paragraph 2-ld) and review any maintenance-related management improvement work items.

- (3) Financial Management. The FMS shall determine if current operating funds or reserves are available to fund proposed work items and if there are any duplicative items in the PHA's operating budget and proposed modernization budget. The FMS shall review Form HUD-52823, Project Financial Forecast, and any financial and accounting-related management improvement work items.
  - (4) Occupancy. The Occupancy Specialist shall review any proposed changes in project density, unit distribution and household type served, the adequacy of the PHA's plan, if any, for rehousing residents, and any occupancy-related management improvement work items.
  - (5) Equal Opportunity. The FH&EO Division shall evaluate PHA compliance with Section 3 of the HUD Act of 1968 and Title VI of the Civil Rights Act of 1964, as applicable. Where a finding of noncompliance is outstanding, the FH&EO Division shall consult the Regional FH&EO Compliance staff regarding the adequacy of the PHA's proposed corrective action or shall refer the matter to that Compliance staff for resolution.
- c. Collation of Technical Review Comments. The HMO shall collate the technical review comments. Reviewers shall meet to reconcile any differences of opinion among individual reviewers. The Chief, AHM Branch, shall resolve any unreconciled differences among reviewers. The Field Office Manager shall resolve any unreconciled differences among Housing Management and other organizational units.
- d. Revisions. If the technical reviewers agree that revisions to the budget or other documents within the Final Application package are required, the HMO shall contact the PHA to discuss the required revisions. If the revisions are extensive, it may be necessary to meet with the PHA. The HMO shall advise the PHA that the Final Application will not be processed for approval until the major revisions have been incorporated into the application and resubmitted

to the Field Office. If the PHA cannot make the required revisions within the required time frame, the AHM staff shall not consider the PHA for funding.

- 4-2. ENVIRONMENTAL REVIEW. The HMO shall determine whether the PHA is in compliance with the environmental requirements set forth in paragraph 6-3. In addition, the HMO shall conduct the appropriate environmental review required under HUD regulations (24 CFR Part 50, Procedures for Protection and Enhancement of Environmental Quality), implementing the National Environmental Policy Act (NEPA) of 1969. These review requirements are summarized below:
- a. An environmental assessment is required for all modernization programs involving up to 2,500 units except where all of the following criteria are satisfied:
    - (1) Does not increase the number of dwelling units per acre by more than 20 percent. Any increase will generally occur where larger size units are converted into smaller size units.
    - (2) Does not change land uses from residential to nonresidential or vice versa. The conversion of dwelling units to community, management or maintenance space or new construction of such space does not change the basic residential nature of the land use.
    - (3) Does not cost 75 percent or more of the replacement cost of the project after modernization.
    - (4) Does not involve the demolition of a building, or parts of a building, containing dwelling units.
  - b. Where an environmental assessment is required, the HMO shall complete Form HUD-4128, Environmental Assessment for Sub-division and Multifamily Projects, which must be signed by the Director, Housing Management Division, before approval of the Final Application. Where more than 200 units are involved, the Field Office Environmental Clearance Officer must also sign the Form HUD-4128. Where less than 200 units are involved, a copy is sent to the Environmental Clearance Officer for informational purposes.
  - c. Where an environmental assessment is not required under subparagraph a, the HMO shall complete Form HUD-4128.1, Compliance and LAC Conditions Record, which must be signed

by the Chief, AHM Branch. The HMO shall mark "N/A" those parts that are not applicable to modernization.

- d. An Environmental Impact Statement (EIS) must be prepared for modernization programs where called for as a result of the environmental assessment. An EIS also must be prepared for modernization programs involving over 2,500 units, unless it is determined, as a result of an environmental assessment or in preparing a draft EIS, that the program will not have a significant impact on the human environment; in that case, the HMO shall contact the Field Office Environmental Clearance Officer for procedures.

#### 4-3. FINANCIAL CONTROLS.

- a. General. Before Federal Fiscal Year (FFY) 1977, HUD used two financial controls: annual contributions contract authority (contract authority) and loan authority (capital funds). The Department of Housing and Urban Development - Independent Agencies Appropriations Act, 1976, P.L. 94-116, established a third control which is budget authority. Beginning in FFY 1977, and each FFY thereafter, all assigned modernization funds are subject to these three controls.
- b. Contract Authority. Contract authority is the statutory authority which pledges the full faith of the Congress to appropriate funds to pay annual contributions committed by HUD in contracts with PHAs. A portion of the total contract authority provided by the Congress and apportioned each year to HUD by the Office of Management and Budget is allotted to the Assistant Secretary for Public and Indian Housing for commitment for modernization purposes that year. Contract authority committed is the amount of annual contributions pledged annually to meet the annual level debt service of the costs of modernization.
- c. Loan Authority (Capital Funds).
  - (1) Loan authority represents the costs of modernization (Maximum Modernization Cost) that can be supported by available contract authority. In determining the total amount of loan authority available nationally in any given FFY, Headquarters considers the available contract authority, the estimated average Minimum Loan Interest Rate for the FFY, and the maximum number of

debt service annual contributions that will be paid on Modernization Projects.

- (2) By using the estimated average Minimum Loan Interest Rate and the maximum number of debt service annual contributions, Headquarters obtains the amortization factor required to amortize the new modernization capital funds from the "Financial Compound Interest and Annuity Tables," Column entitled "Partial Payment," where the numbers at the right represent the number of debt service annual contributions. For example, if the Minimum Loan Interest Rate at the time of Headquarters fund assignment is estimated to average 8 percent for the entire FFY, and the number of debt service annual contributions is 20, the amortization factor is .1018522088. If the contract authority available nationally is \$77,500,000, Headquarters computes the amount of loan authority available nationally by dividing the contract authority (\$77,500,000) by the amortization factor which is rounded to five digits to the right of the decimal (.10185) to arrive at \$760,922,926 of available loan authority. This formula is illustrated below:

$$(\text{Loan Authority}) = (\text{Contract Authority}) \div (\text{Amortization Factor})$$

- d. Budget Authority. Budget authority is the total amount of annual contributions that will be paid by HUD under the ACC. For modernization, the budget authority available nationally is determined by multiplying the contract authority amount by the number of debt service annual contributions. For example, if the contract authority amount is \$77,500,000 and the number of debt service annual contributions is 20, the amount of budget authority available nationally is \$1,550,000,000. Budget authority is sometimes referred to as "run-out cost." This formula is illustrated below:

$$(\text{Budget Authority}) = (\text{Contract Authority}) \times (\text{Number of Debt Service Annual Contributions})$$

- 4-4. CALCULATION OF CONTRACT AND BUDGET AUTHORITY. Before modernization programs for individual PHAs are approved by the Regional Office, the FMS shall determine for each Modernization Project the amounts of contract and budget authority required to amortize the proposed amount of loan authority.

- a. Determination of Contract Authority Amount. The FMS shall compute the amount of contract authority required to amortize the amount of loan authority proposed for a given Modernization Project by multiplying the amount of loan authority by the amortization factor. The amortization factor is obtained by using the applicable Minimum Loan Interest Rate and the number of debt service annual contributions.
- (1) Minimum Loan Interest Rate. The Minimum Loan Interest Rate is furnished periodically by telegram, in accordance with the requirements of Section 4(a) of the Act and the U.S. Treasury Department.
  - (2) Number of Debt Service Annual Contributions. The number of debt service annual contributions is 20.
  - (3) Amortization Factor. The amortization factor is obtained from the "Financial Compound Interest and Annuity Tables," Column entitled "Partial Payment," where the numbers at the right represent the number of debt service annual contributions. For example, if the Minimum Loan Interest Rate at the time the Modernization List will be approved is 8 percent, and the number of debt service annual contributions for the Modernization Project is 20, the amortization factor is .1018522088. The amortization factor is rounded to five digits to the right of the decimal (.10185).
  - (4) Contract Authority. If the amount of loan authority proposed for a given Modernization Project with the circumstances stated in subparagraph a(3) is \$500,100, the amount of contract authority required is computed by multiplying the loan authority (\$500,100) by the amortization factor (.10185) to arrive at \$50,936 of contract authority. Contract authority is always rounded up to the nearest dollar. This formula is illustrated below:  
$$(\text{Contract Authority}) = (\text{Loan Authority}) \times (\text{Amortization Factor})$$
- b. Determination of Budget Authority Amount. The FMS shall compute the amount of budget authority required to amortize the amount of loan authority proposed for a given Modernization Project by multiplying the amount of contract authority by the number of debt service annual contributions. For example, if the contract authority amount is \$50,936 and the number of debt service annual contributions is 20, the

budget authority amount is \$1,018,720. See formula in paragraph 4-3d.

- c. Management of Modernization Funds. For proper management of modernization funds, the FMS shall maintain Form HUD-53003, Modernization Fund Ledger, attached as Appendix 13. The FMS shall use this ledger for recording financial information on each Modernization Project before Modernization List approval to assure that the Field Office's subassignment is not exceeded.

4-5. FINAL FUNDING DECISIONS.

a. Field Office Recommendations.

- (1) Approval. The Field Office may recommend approval of the Final Application, with or without minor revisions, if the PHA has submitted any required major revisions to the Final Application. To the extent that the Final Applications have no changes or are substantially consistent in PHAs, projects, types of modernization, dollar amounts or work items from the Regional preliminary funding decisions, Regional review of the Final Applications is not required.
- (2) Disapproval. Since the application process provides ample opportunity for the PHA to discuss its modernization needs with the Field Office and for the Field Office to convey program requirements and to specify the scope of work to the PHA, it is not anticipated that many PHAs will submit Final Applications that are completely unacceptable. If the Field Office believes that the Final Application does not meet the requirements of the Field Office Letter Report or is not reasonable in scope, the Field Office may recommend disapproval.

- b. Regional Office Decisions. The Regional Office shall review the Field Office recommendations, including Forms HUD-52825, and notify the Field Offices in writing of its final funding decisions. The Regional Office shall not approve any PHA for funding unless the Board Resolution has been submitted to the Field Office and is acceptable to both the FH&EO Division and the AHM Branch. At this time, the Regional Office shall subassign all funds or make adjustments to funds previously subassigned.

- 4-6. PREPARATION OF PROGRAM APPROVAL DOCUMENTS. Immediately upon notification by the Regional Office of the final funding decisions, the HMO shall prepare or request the FMS to prepare the following program approval documents:
- a. Form HUD-5079A, Modernization List (Part I). A completed sample Form HUD-5079 is attached as Appendix 14.
  - b. Form HUD-52540, Project Accounting Data. A completed sample Form HUD-52540 is attached as Appendix 15.
  - c. Form HUD-416.2 HUD Notification.
  - d. PHA Approval Letter. An approval letter to the PHA shall be prepared for the signature of the Field Office Manager or Regional Administrator. The letter shall state the amount of funds obligated by project under the Modernization Project, explain any minor revisions made to the budget, and indicate that the PHA will be receiving further instructions on the ACC amendment. The letter also shall state the extent to which the PHA is being allowed to certify under paragraph 7-1. Where the Field Office is approving the first stage of a two-stage comprehensive modernization, the approval letter shall state the approximate balance of the funds which will be approved for the project, subject to certain conditions. See paragraph 3-12d regarding the contents of the approval letter where the Field Office is approving planning costs as a separate Modernization Project. Subject to appropriate adaptation, the approval letter should contain the following language:

Our review has indicated that the total modernization funds required for all currently needed physical and management improvements at project \_\_\_\_\_ is \$ \_\_\_\_\_. Of this amount, we are approving \$ \_\_\_\_\_ for the first stage of the two-stage comprehensive modernization at this project. While we cannot presently make any legal commitment of funds for subsequent Federal Fiscal Years, we will make a good faith effort to provide the modernization funding required for the second stage in a subsequent year. This good faith effort is dependent upon the availability of future funds, your satisfactory progress in obligating first stage funds, your submission of additional documents as set forth in paragraph 3-12b(4), and your compliance with HUD regulatory and statutory requirements. Your agency must not incur any liabilities in reliance on our approval of future funding.

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4-7. PROGRAM APPROVAL AND FUND RESERVATION.

- a. Assembly of Documents. The HMO shall assemble and route the following documents to the Field Office Manager for approval:
- (1) Original and two copies of the PHA approval letter.
  - (2) Original of the Final Application.
  - (3) Original and six copies of Form HUD-5079A.
  - (4) Original and one copy of Form HUD-52540.
  - (5) Original and three copies of Form HUD-416.2.
- b. Modernization List Approval. When funds are available, the Field Office Manager's signature on Form HUD-5079A represents the obligation of modernization funds for the PHA's Modernization Project.
- c. Action. After approval, the Field Office Manager shall return the documents to the HMO who shall arrange for the immediate transmittal of one copy of Form HUD-5079A, one copy of the approval letter with original signature, and the original of Form HUD-52540 to the Regional Accounting Division (RAD) for program reservation purposes. The RAD will use the approval date on Form HUD-5079A as the reservation date and will notify the Field Office of program reservation. After notification by the RAD that funds are available, the HMO may transmit the HUD Notification (see paragraph 4-8). If funds are not available, the HUD Notification may not be transmitted.

4-8. TRANSMITTAL OF HUD NOTIFICATION.

- a. Upon notification from the RAD, the HMO shall arrange for the immediate transmittal of one copy of Form HUD-416.2 to the Office of Legislation and Congressional Relations by facsimile machine. The HMO shall verify with the appropriate machine operator that the facsimile was sent and that receipt was confirmed, and shall note the actual date and time of transmission. The HMO shall arrange for copies of Form HUD-416.2 to be sent to the Regional and Field Office Public Affairs Officers.
- b. The Field Office may announce a modernization program approval after five working days provided that the Office of

Legislation and Congressional Relations has not telephoned the Field Office to request that announcement be delayed.

4-9. DISTRIBUTION OF APPROVED DOCUMENTS. When modernization program approval can be announced, the HMO shall arrange for the following distribution of approved documents:

- a. To the PHA, the original of the approval letter and one copy each of the approved Form HUD-52825 and Form HUD-5079A.
- b. To the AHM Branch files, the original of the Final Application and one copy each of the approval letter, Form HUD-5079A, Form HUD-52540, and Form HUD-416.2 for records purposes.
- c. To the Regional or Chief Counsel, the original of Form HUD-5079A for purposes of preparing the ACC amendment (see paragraph 4-10a). To expedite preparation of the ACC amendment, Form HUD-5079A may be sent to Counsel immediately after fund reservation.
- d. To the Regional Project Financing Specialist, one copy of Form HUD-5079A for financing purposes.
- e. To Headquarters, Office of Finance and Accounting (OFA), Attention: Director, Assisted Housing Accounting Division, two copies of Form HUD-5079A for fund control purposes.

4-10. ANNUAL CONTRIBUTIONS CONTRACT AMENDMENT.

- a. Preparation. After fund reservation, the HMO shall request Regional or Chief Counsel to prepare Form HUD-53009, Modernization Project Amendment to Consolidated ACC. A sample Form HUD-53009 for rental projects is attached as Appendix 16. All projects included in the Modernization Project must be under the same consolidated ACC. Lanham Act or PWA projects not under an ACC but included in the Modernization Project shall be placed under the ACC. Within 14 days of List approval, Counsel shall transmit the ACC amendment, Form HUD-9009, General Certificate, and a new Form HUD-52250, Permanent Note, to the PHA for completion and return, together with a copy of the resolution by the PHA Board of Commissioners authorizing execution of the ACC amendment. Counsel shall notify the HMO of the transmittal date of these documents to the PHA.
- b. Execution. Within 30 days of receipt of the ACC amendment and other required documents, the PHA shall sign

the documents and return them to Counsel. Upon receipt of the PHA-signed ACC amendment and other required documents, Counsel shall forward the ACC amendment to the Field Office Manager for execution within seven days. See paragraph 4-13b for special instructions for Section 23 Leased Housing Bond-Financed projects.

c. Distribution of Legal Documents. After the Field Office Manager executes the ACC amendment, Counsel shall notify the HMO and arrange for the following distribution of documents:

- (1) To the PHA, one executed copy of the ACC amendment.
- (2) To Counsel's files, one copy of the executed ACC amendment, the Board resolution, and Form HUD-9009 for records purposes.
- (3) To Headquarters, OFA, Attention: Director, Assisted Housing Accounting Division, the originals of the ACC amendment and the new Permanent Note for fund control and disbursement purposes.

4-11. ESTABLISHMENT OF MAXIMUM CONTRIBUTION PERIOD. Upon receipt of the ACC amendment, OFA will establish the Maximum Contribution Period for the Modernization Project. The Maximum Contribution Period begins on the first annual contributions date after the effective date of the ACC amendment and continues for twenty years, e.g., 1/15/81 - 1/14/01 or 4/15/82 - 4/14/02. OFA will notify the Field Office and the PHA of the Maximum Contribution Period for the Modernization Project on Form HUD-52422, Computation of Fixed Annual Contribution.

4-12. SPECIAL REQUIREMENTS FOR HOMEOWNERSHIP PROJECTS.

a. Promptly after HUD approval of the Final Application, each homebuyer family shall execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase price of its home and an extension of the amortization period in accordance with subparagraphs b and c, except where the modernization work is limited to the correction of development deficiencies, conduct of energy audits and undertaking of cost-effective energy conservation measures (see paragraph 2-3).

NOTE: Homebuyer agreements amended to reflect the cost of energy conservation work approved in FFYs 1980-83 shall be reamended to reduce the purchase price and

shorten the amortization period by the appropriate amount and time. This will permit equitable treatment of all homebuyer families, regardless of the FFY of approval.

b. For Turnkey III projects and for Mutual Help projects placed under ACC from March 9, 1976 or converted in accordance with 24 CFR 805.428:

- (1) The amount of estimated modernization cost attributable to the home, as shown in the HUD-approved Final Application, shall be added to the homebuyer's purchase price as initially determined (under 24 CFR 804.113(a) or 804.115(b) for Turnkey III projects, or under 24 CFR 805.422(b) or (c) for Mutual Help projects).
- (2) The period of the homebuyer's current purchase price schedule shall be extended by the same percentage as the percentage of increase in the homebuyer's purchase price. The new purchase price schedule shall:
  - (a) show monthly amortization of the new purchase price over a period commencing on the same day as the original purchase price schedule and terminating at the end of the extended period; and
  - (b) be computed on the basis of the same interest rate as used for the current purchase price schedule.
- (3) If a modernization program is approved for a project after one or more earlier modernization programs for the same project, the total amount of modernization cost attributable to the home under the prior modernization program(s) shall be included as part of the homebuyer's initial purchase price in applying the foregoing provisions of subparagraphs (b)(1) and (2).

c. For Mutual Help projects placed under ACC before March 9, 1976, and not converted in accordance with 24 CFR 805.428 and for Turnkey III projects that do not have purchase price schedules:

- (1) These projects do not involve purchase price schedules for amortization of the homebuyer's purchase price over a fixed period of time because the homebuyer's purchase price in these projects is based on the unamortized balance of the portion of the project's

development debt attributable to the home. Consequently, it is necessary to establish a separate schedule for the amortization of the estimated modernization cost attributable to the home, as shown by the HUD-approved Final Application.

- (2) The PHA shall furnish to the homebuyer a schedule showing monthly amortization of the estimated modernization cost attributable to the home, at the Minimum Loan Interest Rate specified in the ACC for the Modernization Project, over a period commencing on the first day of the month after the date of original occupancy of the home by the homebuyer and terminating at the end of the period determined as follows:

- (a) Divide the amount of the estimated modernization cost attributable to the home (including the total amount of modernization cost attributable to the home under prior modernization programs, if any) by the amount of the current HUD-approved estimated replacement cost of the home.
- (b) Multiply this amount by 25, round the result to the next higher number and add that number to 25. This is the number of years to be used as the period for the modernization amortization schedule.
- (c) The purchase price for the unit shall be the sum of (A) the balance of the debt attributable to the home and (B) the amount remaining on the modernization schedule at the time of settlement.

- (3) The calculation provided in subparagraph c(2) shall apply retroactively to modernization programs approved from FFY 1980 funds. Therefore, the PHA shall recalculate the homebuyer's amortization schedule to reflect the provisions of subparagraph c(2).

- d. See the Indian Housing Handbook 7440.1 for further instructions.

4-13. SPECIAL REQUIREMENTS FOR SECTION 23 LEASED HOUSING BOND-FINANCED PROJECTS.

- a. Conditions. A Section 23 Leased Housing Bond-Financed project (BFP) is eligible for modernization (comprehensive, special purpose or emergency) only if the Field Office

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determines that the project has met the following conditions:

- (1) The BFP was financed by the issuance of bonds.
  - (2) Clear title to the BFP will be conveyed to or vested in the PHA at the end of the Section 23 lease term. The Lease Agreement and Trust Indenture must provide that title to the property will pass to the PHA at that time. Based on title evidence provided by the PHA, Regional or Chief Counsel shall determine whether the PHA is assured of obtaining good title under the legal arrangements for the project and whether there are any liens or encumbrances against the property junior to the bond indenture.
  - (3) Based upon a full review of the legal documentation for the BFP by the Counsel, there are no legal obstacles affecting the PHA's use of the property as low-income public housing during the 20-year amortization period of the modernization. This review would include any known pending or threatened litigation affecting the BFP.
  - (4) Based upon an on-site inspection of the BFP, the AHM Branch can certify that, after completion of the proposed modernization, the BFP will have a remaining useful life of at least 20 years and that it is in the financial interest of the Federal Government to improve the BFP.
  - (5) The BFP is covered by a Cooperation Agreement between the PHA and the local governing body during the 20-year amortization period of the modernization, assuring tax exemption and provision of municipal services as in the case of PHA-owned projects.
- b. Processing. If the BFP meets the special conditions in subparagraph a and is, therefore, eligible for modernization funding, the application requirements are the same as for PHA-owned projects. However, the following special processing requirements shall apply:
- (1) Separate Modernization Project. The BFP shall not be included in the Modernization Project for the PHA-owned projects. A separate Modernization Project shall be established for all of the PHA's BFPs to be modernized during any given FFY. A sample Form HUD-53008, Modernization Project Amendment to Consolidated ACC for Modernization of Section 23 Leased Housing

Bond-Financed Projects, is attached as Appendix 17. The first Modernization Project for BFPs for a PHA shall be 985, e.g., VA-30-985. The second Modernization Project for BFPs for the same PHA shall be 986, e.g., VA-30-986.

(2) Cooperation Agreement.

- (a) During the 20-year term of the Modernization Project, the BFP must be covered by a Cooperation Agreement between the local government and the PHA providing for tax exemption and other local assistance as in the case of PHA-owned projects. Form HUD-53008 states that the individual projects are exempt from real and personal property taxes. Space is provided on Form HUD-53008 after item 16 for listing the applicable Cooperation Agreements. Form HUD-53008 shall not be executed until Counsel has determined that the BFP is covered by a Cooperation Agreement.
- (b) A new Cooperation Agreement may not be needed if Counsel determines that the BFP is already covered by an existing Cooperation Agreement providing for the required tax exemption and local assistance. If Counsel proposes to rely on a previously executed Cooperation Agreement covering a stated number of units to be developed by the PHA, but not referring specifically to the BFP, Counsel shall determine whether there is adequate evidence that the BFP will be treated by the local government as within the coverage of the Cooperation Agreement. If there is any uncertainty as to whether the BFP is covered by the Cooperation Agreement, Counsel shall require that the existing Cooperation Agreement be amended to refer specifically to the BFP.
- (c) If the BFP is not already covered by a sufficient Cooperation Agreement, the PHA shall enter into a Cooperation Agreement with the local government. In such case, the Cooperation Agreement shall specifically designate the BFP to which the exemption applies in a manner that clearly indicates the real property covered by the exemption (generally in the same manner used to designate properties for local tax billing). If any tax lien has been or may be attached to the property

before execution of the ACC amendment, but covering taxes for any period subsequent to execution of the ACC amendment, Counsel shall ensure (by specific provision in the Cooperation Agreement or otherwise) that the lien of and liability for the tax is released before execution of the ACC amendment.

- (d) If the BFP is already exempt from real and personal property taxes under State law, or under a Cooperation Agreement that does not provide for Payments in Lieu of Taxes (PILOT), the Cooperation Agreement shall not include any provision for PILOT. If the BFP is already exempt from taxation under a Cooperation Agreement that provides for PILOT, the Cooperation Agreement may include provision for PILOT, but not to exceed the amounts required under Section 6(d) of the A t.

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CHAPTER 5. TENANT/HOMEBUYER CONSULTATION REQUIREMENTS

5-1. TENANTS.

- a. Before submission of the Preliminary Application, the PHA shall consult with tenants regarding its intent to submit an application for modernization fund. At least three weeks before the Joint Review, the PHA shall notify the tenants of the project to be modernized and the tenant organization, if any, of the proposed modernization program, afford tenants a reasonable opportunity to present their views on the proposed program and alternatives to it, and give full and serious consideration to tenant recommendations. The PHA notice shall include information on the PHA's ideas for modernization and the methods, including time limit, for tenants to present their views.
- b. At least one day before the Joint Review starts, the PHA shall provide the tenants and the tenant organization, if any, with a copy of its brief written evaluation of tenant recommendations, indicating the reasons for PHA acceptance or rejection, consistent with HUD requirements and the PHA's own determination of efficiency, economy and need. During the Joint Review, the PHA shall provide HUD with a copy of tenant recommendations and the PHA's evaluation. After HUD approval of the modernization program, the PHA shall inform the tenants and the tenant organization, if any, of the approved work items.
- c. The provisions of this paragraph do not apply where only work items of an emergency nature, affecting the life, health and safety of tenants, are proposed. However, the PHA shall inform tenants of approved emergency work items.
- d. The PHA shall achieve tenant consultation by use of informational materials, meetings or other methods which it deems most effective.

5-2. HOMEBUYERS.

- a. Before the Joint Review, the PHA shall discuss the modernization program with the homebuyer families of the project to be modernized and inform each homebuyer family that:
  - (1) to participate, it must be in substantial compliance with the terms of its Homebuyer Agreement;

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- (2) it will have an opportunity to express its views and preferences with respect to the modernization of its home;
  - (3) the purchase price and the amortization period will be increased as provided in paragraph 4-12;
  - (4) it will have an opportunity to participate in the final inspection of the work to determine completion in accordance with the requirements; and
  - (5) participation in the program is optional.
- b. The PHA shall provide each homebuyer family with a copy of the PHA's evaluation of its recommendations, the tentative decisions reached on the modernization program to be submitted to the Field Office, the estimated cost of the proposed modernization program, and the maximum amount of this cost to be attributed to its home.
  - c. If the homebuyer family decides to participate in the modernization program with respect to any of the proposed work items, it must agree in writing that its Homebuyer Agreement will be amended upon approval of the Final Application to provide that, as a result of the amount of modernization cost attributed to its home, the purchase price and the amortization period will be increased in accordance with paragraph 4-12. The PHA shall retain copies of the signed agreements and the amended Homebuyer Agreements in its files for inspection by the Field Office.
  - d. Any homebuyer family may decline to participate without risk to its homebuyer status.
  - e. The provisions of subparagraphs a through d do not apply where the modernization work is limited to the correction of development deficiencies, conduct of energy audits and undertaking of cost-effective energy conservation measures (see paragraph 2-3).

CHAPTER 6. OTHER PROGRAM REQUIREMENTS6-1. CIVIL RIGHTS COMPLIANCE.a. The PHA shall comply with:

- (1) In the case of Indian Housing Authorities (IHAs):
  - (a) Title II of the Civil Rights Act of 1968 (Indian Civil Rights Act) (25 U.S.C. 1301-1303) or Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) and Title VIII of the Civil Rights Act of 1968, as amended, (42 U.S.C. 3601-3619), as applicable. The Indian Civil Rights Act is applicable (Title VI and Title VIII are inapplicable) to IHAs established by exercise of a tribe's powers of self-government. In the case of an IHA established under State law, the applicability of the Indian Civil Rights Act (or of Title VI and Title VIII) will be determined by HUD on a case-by-case basis in accordance with 24 CFR 805.105;
  - (b) Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); and
  - (c) Executive Order 11246 (30 FR 12319) to the maximum extent consistent with, but not in derogation of compliance with, Section 7(b) of the Indian Self-Determination and Education Assistance Act.
- (2) In the case of all other PHAs, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, Executive Orders 11063 (27 FR 11527), 11246, 12432 and 12138 (Women's Business Enterprise), Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u), HUD regulations (24 CFR Part 135) implementing Section 3, Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and all applicable regulations issued pursuant to these laws.

b. Except for modernization work of an emergency nature, affecting the life, health and safety of tenants, HUD will not approve a modernization program if:

- (1) There is a pending civil rights suit against the PHA instituted by the Department of Justice;

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- (2) There are outstanding HUD findings of PHA noncompliance with civil rights statutes, executive orders, or regulations as a result of formal administrative proceedings, unless the PHA is implementing a HUD-approved tenant selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance; or
- (3) There has been a deferral of the processing of applications from the PHA imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1).
- c. Section 3 of HUD Act of 1968. Under the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, the PHA shall require that, to the greatest extent feasible, opportunities for training and employment be given to lower-income persons residing within the unit of local government or the metropolitan area (or non-metropolitan county), as determined by the Secretary, in which the project is located; and that contracts for work be awarded to business concerns which are located in or owned in substantial part by persons residing in the same metropolitan area (or non-metropolitan county) as the project, provided that the contract award complies with State and local law and Federal requirements. The PHA and its contractors on contracts over \$500,000 and subcontractors on contracts over \$50,000 where the main contract is over \$500,000 shall comply with the regulations implementing Section 3, as set forth in 24 CFR Part 135. The PHA shall develop an affirmative action plan for the use of Section 3 businesses. Within 15 days of the award of any contract covered by Section 3, the PHA shall advise the Field Office of the steps which have been and will be taken to comply with the requirements of 24 CFR Part 135.
- d. Affirmative Action Program Under Executive Order 11246.
- (1) PHA Contract Administration. Under Executive Order 11246, as amended, the PHA shall advise all construction-related contractors with contracts over \$10,000 to document affirmative actions taken to ensure equal opportunity in employment. This documentation is subject to review by the Regional Office of the Department of Labor. As a part of normal contract administration, the PHA is responsible for determining

compliance with the equal opportunity clause or written affirmative action requirements and for reviewing contractor performance to insure that these responsibilities are met. The PHA shall take the following action:

- (a) Carry out sanctions against a contractor or subcontractor and furnish information, as required by the Department of Labor.
  - (b) Maintain an affirmative action file to keep written reports detailing its efforts, with dates, to meet the commitments under Executive Order 11246, as amended.
  - (c) Assure that all PHA construction contracts over \$10,000 are subject to Executive Order 11246, as amended, and include appropriate provisions.
- (2) Responsibilities of Contractors and Subcontractors.  
All contractors and subcontractors on modernization are required to take affirmative action to comply with the equal employment opportunity provisions of Executive Order 11246, as amended.

6-2. MINORITY AND WOMEN'S BUSINESS OR INDIAN ENTERPRISE OPPORTUNITY.

- a. MBE Goal. Under Executive Orders 11625 (36 FR 1967) and 12432, the PHA, as part of its affirmative action program, shall provide every feasible opportunity for minority business enterprises (MBEs) to participate in bidding for modernization work. The PHA shall establish through board resolution, the goal of awarding at least 20 percent of the dollar value of the total of the contracts with construction contractors, architects/engineers, consultants (for both physical and management improvements) and purchases under the HUD Consolidated Supply Program. Where the main construction contract is awarded to an MBE, the PHA shall count the entire dollar amount of the contract toward the MBE goal. Where the main construction contract is not awarded to an MBE, but one or more of the subcontracts is awarded to an MBE, the PHA shall count the dollar value of such subcontract(s) toward the MBE goal. The PHA shall not double count the dollar value of the main construction contract and any of its subcontracts. Satisfactory progress by the PHA in meeting this goal will be a factor in determining PHA modernization funding in future fiscal years.

The Office of Management and Budget has not yet approved the specific reporting requirements for this goal. However, the PHA may voluntarily wish to submit progress reports.

b. Definitions.

- (1) MBE means a business that is owned and controlled by one or more socially and economically disadvantaged persons. Such persons include, but are not limited to, Blacks, American Indians or Alaskan Natives, Hispanics and Asians or Pacific Islanders.
- (2) Owned and controlled by one or more socially and economically disadvantaged persons means that a socially and economically disadvantaged person(s), or a for-profit business or nonprofit organization controlled by such persons(s), possess at least 51 percent of the ownership of the business, and its management and daily business operation are controlled by such persons.
- (3) The following are definitions of persons specifically included under subparagraph b(1) when they are citizens or lawful residents of the United States:
  - (a) Black. A person having origin in any of the black racial groups of Africa, but not of Hispanic origin.
  - (b) American Indian or Alaskan Native. A person having origin in any of the original people of North America, and who maintains cultural identification through tribal affiliation or community recognition.
  - (c) Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
  - (d) Asian or Pacific Islander. A person having origin in any of the original people of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Island. This area includes, for example, China, India, Japan, Korea, the Philippine Islands and Samoa.

- c. Bid or Solicitation Process. To ensure that MBEs are aware of modernization bid opportunities, the PHA may wish to adopt the following suggested techniques, in addition to its existing procedures, for publicizing upcoming Invitations for Bid or Requests for Proposals (see Chapter 9):

- (1) Timely advertisement in media with a largely minority audience;
  - (2) Solicitation of bids or requests for proposals directly from MBEs;
  - (3) Posting of signs around the project and in the PHA management office and local stores;
  - (4) Notification of community organizations, public or private institutions, and local minority business organizations and trade associations; and
  - (5) Notification of the tenant organization, if any.
- d. Women's Business Enterprises. Under Executive Order 12138, both PHAs and IHAs shall take appropriate affirmative action to assist women's business enterprises.
- e. Indian Enterprises. In accordance with the Indian Determination and Education Assistance Act and the Indian Housing regulation (24 CFR Part 805), IHAs shall, to the greatest extent feasible, give preference in the award of modernization contracts during any FFY to Indian organizations and Indian-owned economic enterprises, as defined in 24 CFR 805.106(a).
- 6-3. ENVIRONMENT. The PHA's Final Application is subject to all applicable requirements under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332 et seq.), as set forth in HUD regulation 24 CFR Part 50. Specific attention is directed to 24 CFR 50.4 pertaining to overlaying environmental laws, Executive Orders and HUD standards. The Field Office shall document compliance with these requirements on Forms HUD-4128 and 4128.1, as appropriate (see paragraph 4-2).
- 6-4. FLOOD INSURANCE. The PHA shall comply with regulations and requirements under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.). The PHA shall certify that the project to be modernized is not located in an identified special flood hazard area, or if the project is located in such an area, the PHA shall furnish either a copy of the flood insurance policy obtained by the PHA to cover the project or a certification that the special flood hazard area has been identified for less than one year and that the community in which the project is located is not participating in the National Flood Insurance Program. A project located in a special flood hazard area of a community that has been formally notified of the area for more than one

year, but has not yet entered the National Flood Insurance Program, is not eligible for modernization funding until the community enters the program.

- a. If a project is located in an identified special flood hazard area and the community is participating in the National Flood Insurance Program, the PHA shall obtain flood insurance coverage for each affected building in an amount equal to its replacement cost after the proposed modernization (less estimated land cost) or to the maximum limit of coverage made available with respect to that particular type of property under the National Flood Insurance Act of 1968, whichever is less. For each affected building in Lanham or PWA projects, the PHA shall obtain flood insurance coverage in an amount equal to its full insurable value after the proposed modernization (less estimated land cost) or to the maximum limit of coverage made available with respect to that particular type of property under the National Flood Insurance Act of 1968, whichever is less. The PHA shall continue to carry the required flood insurance after completion of the modernization. Flood insurance premiums are not eligible modernization costs.
- b. If the proposed modernization program involves new construction or substantial improvements of an existing structure, as defined in 44 CFR Part 60, the PHA shall comply with the requirements on elevation and flood proofing.

6-5. LEAD-BASED PAINT POISONING PREVENTION. The PHA shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) and HUD implementing regulations (24 CFR Part 35). The PHA shall inspect the project to be modernized to determine if immediate lead-based paint hazards exist and include in the Final Application treatment necessary to eliminate any hazards.

6-6. ACCESSIBILITY FOR PHYSICALLY HANDICAPPED. The PHA shall comply with the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and HUD implementing regulations (24 CFR Part 40). Modernization that involves work which is related to the standards in 24 CFR 40.4 (e.g., entrances, exits, common areas or portions of dwelling units) shall allow accessibility by handicapped persons. To determine whether accessible units are needed at the project to be comprehensively modernized, the PHA shall assess, on a PHA-wide basis, the needs of current tenants and applicants on the waiting list.

- a. If the PHA and the Field Office determine that there is no need for accessible dwelling units or that the need is

being or will be met through other means, e.g., new construction, Section 8 or modernization of another project, the PHA shall submit supporting documentation to the Field Office. If the Field Office agrees that the project's intended use is not for housing of handicapped persons, no further action is required. Entrances, exits and common areas altered in the course of the modernization remain subject to accessibility requirements.

- b. If the PHA and the Field Office determine that the alteration required to achieve accessibility is not structurally feasible, the PHA shall submit supporting documentation to the Field Office. If the Field Office agrees that accessibility is not structurally feasible, no further action is required.
- c. If the PHA and the Field Office determine that the alteration required to achieve accessibility, when added to other work required, would result in the modernization cost (excluding the cost of management improvements) exceeding the prototype cost for a new project, the PHA shall submit supporting documentation to the Field Office. After Field Office review, the Field Office shall submit a request to Headquarters for a waiver under paragraph 2-1e or the 24 CFR Part 40 requirement for accessibility, as set forth in 24 CFR Part 41.
- 6-7. ENERGY CONSERVATION. The PHA shall conduct an energy audit and undertake cost-effective energy conservation measures under 24 CFR Part 865, Subpart C, before HUD approval of comprehensive, special purpose or homeownership modernization for a project. The cost of performing an energy audit is an eligible modernization cost.
- 6-8. WAGE RATES. Before bid advertisement, the PHA shall consult with the Field Office Maintenance Engineer on the correct wage rates to apply. The Maintenance Engineer, in turn, shall consult with the Field or Regional Labor Relations staff concerning the advice given to the PHA. The PHA shall request the wage rates from the Field Office Labor Relations staff or the Regional Office where the labor relations function has been regionalized. In providing the wage rates, the Field or Regional Labor Relation staff, as appropriate, shall make the final decision on the correct wage rates.
- a. HUD-Determined Wage Rates.
- (1) Legislative Provisions. Under Section 12 of the Act, the PHA and its contractors shall pay not less than

the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State, tribal or local law) by the Secretary, to all laborers and mechanics employed by the PHA or its contractors in carrying out major repairs as defined in paragraph 1-3.

- (2) PHA Request. At least 45 days before bid advertisement for contract labor or before start of work for force account labor, the PHA shall request a current schedule of HUD-determine wage rates. See paragraph 9-2e(5) for contract wage requirements and the Labor Standards Handbook 1344.1 for labor standards compliance procedures.

b. Davis-Bacon Wage Rates.

- (1) Legislative Provisions. Under Section 12 of the Act, the PHA and its contractors shall pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor, under the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed by the PHA or its contractors in carrying out modernization work or contracts over \$2,000, except work classified as major repairs.
- (2) PHA Request. At least 45 days before bid advertisement for contract labor or before start of work for force account labor, the PHA shall prepare and submit Standard Form 308, Request for Wage Determination. See paragraph 9-14 for contractor payroll requirements. Also see Handbook 1344.1 for labor standards compliance procedures.

c. Single Construction Contracts.

- (1) Each construction contract shall contain only a single wage rate determination. If there is a substantial amount of work in each category (major repairs and non-major repairs), separate contracts should be awarded for each category.
- (2) If both categories of work are included in a single construction contract, the major portion of the work (i.e., 80 percent or more) shall dictate which wage rate applies to all of the work. In no case shall the lesser portion of the mixed work exceed 20 percent of the total contract cost.

- d. Work Hours and Safety Standards. The PHA and its contractors shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), including overtime provisions, for all laborers and mechanics employed by the PHA or its contractors in carrying out modernization work or contracts, under either HUD-determined or Davis-Bacon wage rates.
- e. Technical Wage Rates. The PHA and its construction shall pay HUD-determined prevailing wage rates to all architects, technical engineers, draftsmen and technicians employed in the modernization of a project.

6-9. INSURANCE.

a. Review of Existing Coverages.

- (1) The PHA is required to have in effect: (a) workers' compensation insurance; (b) fire and extended coverage insurance; (c) comprehensive general liability insurance; (d) automobile liability insurance for both PHA-owned and non-owned automobiles; and (e) a fidelity bond. In many instances, the additional exposures created by the modernization activities can be insured by either an endorsement to the existing policy or a letter from the insurance broker/company, acknowledging that the existing policy as written is broad enough to include the additional exposures.
- (2) Following modernization program approval, the PHA shall notify the insurance broker/company in writing of the modernization activities and request written advice concerning what steps, if any, need to be taken to ensure proper coverage. The PHA's letter shall describe the modernization activities in sufficient detail to allow the insurance broker/company to decide what coverage would be adequate. This description shall include the type of work to be performed, the cost of the work, the nature of any structural alterations, and the involvement of PHA employees in the work. The PHA shall send a copy of any policy endorsement or written permission from the insurance broker/company to the Field Office for attachment to its existing policy.

- b. Fire and Extended Coverage. In addition to the general requirements set forth in subparagraph a, the following special requirements apply to fire and extended coverage:

- (1) Where the modernization work is to be performed by contract and is insured under the PHA's existing policy, the PHA shall notify the contractor of this coverage.
  - (2) If the existing policy cannot be endorsed to include the modernization activities because of substantial structural alterations, the PHA shall obtain a builder's risk policy on a "100% Completed Value" form either directly or through the contractor. This policy shall remain in effect through substantial completion of the modernization work, at which time the coverage shall be transferred to the PHA's existing policy.
  - (3) To the extent that the modernization activities increase the value of the building(s), the PHA shall increase the amount of its existing coverage to reflect this higher, insurable value. Where a builder's risk policy was written, this amendment shall not be made until the builder's risk policy is cancelled.
- c. Comprehensive General Liability. In addition to the general requirements set forth in subparagraph a, the PHA shall obtain an endorsement to the comprehensive general liability policy to include owners' and contractors' protective liability coverage to protect the PHA from any claims arising from the contractor's operations. Under no circumstances shall the PHA assume the liability of the contractor under a "Hold Harmless" or contractual liability clause.
- d. Contractor Insurance.
- (1) Evidence of Insurance. Where the modernization work is to be performed by contract, the PHA shall obtain from each contractor and subcontractor certificates of insurance, identifying the project number(s), the name and address of the insurance, and the effective date and the expiration date of the policy. The certificates of insurance also shall indicate that the insurance company shall give the PHA 30 days prior notice of any cancellation or nonrenewal in the contractor's policy.
  - (2) Noncompliance. The PHA shall monitor the insurance policies obtained by all contractors and subcontractors to ensure that the coverage required by the modernization contract is kept in force until the contractor's

work is accepted by the PHA. The PHA shall notify the contractor to stop work if the required insurance coverage is not in force at the time the work begins or if the coverage expires before the work is accepted. The PHA also shall notify the contractor that any such work stoppage is an infraction of the contract and that the contractor is liable for any losses or delays.

- (3) Workers' Compensation. Each contractor or subcontractor shall carry workers' compensation insurance for all employees engaged under the modernization contract.
- (4) Comprehensive General Liability. Each contractor shall carry comprehensive general liability insurance with bodily injury and property damage. The minimum amount of required coverage is \$500,000 per occurrence. The policy shall cover all operations of the contractor in connection with the project, including use of all equipment, hoists, and vehicles on the project site.
- (5) Automobile Liability. Each contractor shall carry automobile liability insurance. The minimum amounts of required coverage are \$100,000/\$300,000 for bodily injury and \$50,000 for property damage.



## CHAPTER 7. IMPLEMENTATION

7-1. PHA CERTIFICATIONS. Following ACC amendment, the PHA shall immediately start implementation of its approved modernization program. The PHA may execute architect's/engineer's contracts, invite bids, and issue change orders without prior Field Office approval where the PHA certifies in writing that all HUD requirements have been met. However, based on an assessment of PHA past performance in modernization and PHA technical capability, the Field Office may establish dollar thresholds for each activity over which the PHA shall submit documents for prior Field Office review and approval. See paragraphs 8-6, 9-4 and 9-16. HUD-established dollar thresholds for a PHA shall apply to all previously approved modernization and shall be revised periodically as a result of Field Office monitoring.

7-2. PROJECT IMPLEMENTATION SCHEDULE.

- a. Requirement. Within 15 days after notification of Final Application approval, the PHA shall submit to the Field Office, Attention: Chief, Assisted Housing Management (AHM) Branch, its schedule for implementing the physical and management improvements at each project approved for modernization. In developing the Project Implementation Schedule, the PHA should consult with the Maintenance Engineer and consider the national norms, set forth in subparagraph c, in relation to its local situation.
- b. Coverage. Each Project Implementation Schedule shall address the following key implementation steps:
  - (1) Architectural/Engineering Contract Award. If there is more than one architectural/engineering contract, this step addresses the award of the first contract for each project approved for modernization.
  - (2) Bid/RFP Advertisement. If there will be multiple contracts, this step addresses the advertisement of the first construction or management contract.
  - (3) Contract Award. If there will be multiple contracts, this step addresses the award of the last construction or management contract, i.e., when all funds will be obligated.
  - (4) Contract Completion. If there will be multiple contracts, this step addresses the completion of all

construction and management contracts, i.e., when all funds will be expended.

- c. National Norms. The following table shows the national norms for the key implementation steps. Although these norms are not mandatory, the PHA is expected to perform within these norms unless satisfactory justification is provided to the Field Office for longer time frames. Variations from the national norms may be justified by differences in work scope and complexity, construction seasons, material or equipment supply, etc.

<u>Key Implementation Steps</u>	<u>Emergency</u>	<u>Special Purpose</u>	<u>Homeownership</u>
First A/E Contract Award	2 mos.	3 mos.	3 mos.
Bid/RFP Advertisement of First Contract	5 mos.	7-10 mos.	7-10 mos.
Award of All Contracts (All Funds Obligated)	7 mos.	9-12 mos.	9-12 mos.
Completion of All Contracts (All Funds Expended)	1 yr.	2 yrs.	2-3 yrs.

<u>Key Implementation Steps</u>	<u>One-Stage Comprehensive</u>	<u>Two-Stage Comprehensive (First/Second)</u>
First A/E Contract Award	3 mos.	3 mos./3 mos.
Bid/RFP Advertisement of First Contract	10-16 mos.	7-10 mos./10-16 mos.
Award of All Contracts (All Funds Obligated)	1-1 1/2 yrs.	9-12 mos./1-1 1/2 yrs.
Completion of All Contracts (All Funds Expended)	3 yrs.	2 yrs./3 yrs.

Note: Months/years are counted from the date of Final Application approval.

- d. Multiple Contracts. Although not required, the PHA is encouraged to develop implementation schedules for each contract where a project will have multiple contracts.

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- e. Field Office Review and Approval. The Field Office shall review the PHA's Project Implementation Schedule and, within 10 days of receipt, either approve, with or without modification, or disapprove. Before modifying the schedule, the Field Office shall discuss any changes with the PHA and try to reach mutual agreement.
- f. PHA Reporting. During implementation, the PHA shall report its progress against the Project Implementation Schedule in the "Comments" column of Form HUD-52826, Schedule/Report of Modernization Expenditures, submitted quarterly to the the Field Office (see paragraph 11-4).
- g. Field Office Monitoring. During implementation, in conjunction with its regular monitoring, the Field Office shall monitor PHA progress against its Project Implementation Schedule. Where the PHA is having difficulty in adhering to its schedule, the Field Office shall promptly provide technical assistance, as required.
- h. Revision. No revisions to the Project Implementation Schedule will be allowed. If the PHA misses a target date for one of the first three key implementation steps, the PHA shall provide a written explanation to the Field Office on how it plans to catch up so that it will meet the next target date. If the PHA misses the target date for the last key implementation step, the PHA shall provide a written explanation to the Field Office and a new target date for completion. Unless the PHA can provide a satisfactory explanation for missing the last target date, i.e., for reasons totally outside of the PHA's control, future funding will be adversely affected.
- 7-3. PHA STAFFING. During the Joint Review, the PHA and the Field Office shall agree on PHA need for additional staff to meet its proposed Project Implementation Schedule. It is essential that certain functions be performed to ensure modernization progress. However, filling the following positions may not be necessary if their functions are being performed satisfactorily.
- a. Modernization Coordinator would be responsible for developing an overall plan and timetable for the implementation of approved modernization programs, including physical and management improvements. The Modernization Coordinator would establish internal administrative controls over key incoming and outgoing documents and PHA activities related to modernization. In addition, the Modernization Coordinator would be responsible for preparing Form
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HUD-52826, Schedule/Report of Modernization Expenditures, and the narrative report on management improvements on a timely basis, and for coordinating the requisitions for funds to the Field Office. Ordinarily, the Modernization Coordinator would report directly to the PHA's Executive Director.

- b. Contract Administrator/Construction Manager would be responsible for: procuring architectural/engineering services; overseeing the entire construction contract process, including preparing and issuing, subject to any required Field Office approval, all modernization contract documents, such as construction and bid documents, contract award, contract changes and time extensions, and contract settlement documents; resolving disputes and claims, subject to Field Office approval; and ensuring that target dates are met. The Contract Administrator/Construction Manager may report directly to the Modernization Coordinator or the Executive Director. Depending upon the size and complexity of the modernization construction contracts, the PHA may wish to assign these functions to two separate positions - that of Contract Administrator and that of Construction Manager.
- c. Clerk-Of-The-Works would be responsible for reporting to the Contract Administrator/Construction Manager all significant events that take place on the construction site. Reports should cover compliance with the contract documents by the contractor, and any deviation therefrom, quality of workmanship, timeliness of delivery of materials and of performance, need for change orders and extensions of time, and any construction problems which may arise. Also included in the Clerk-of-the-Works duties are the preparation of progress reports and charts and keeping daily logs of personnel working on the project, visitors to the site, materials delivered, and any other information that the Contract Administrator/Construction Manager determines is necessary for the proper administration of the contract. A fulltime Clerk-of-the-Works is necessary only if the size of the construction project warrants it. Thus, depending upon the number of active modernization programs underway and their size, a PHA may have more than one Clerk reporting to the Contract Administrator/Construction Manager. If in the judgment of the Contract Administrator/Construction Manager, no Clerk is necessary, the functions of the Clerk as are appropriate may be performed by the architect/engineer.

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CHAPTER 8. ARCHITECTS/ENGINEERS

8-1. DETERMINATION OF NEED. During the Joint Review, the PHA and the Field Office shall reach agreement upon the PHA's need for the professional services of an architect/engineer, taking into account PHA staff capabilities and the type and complexity of work. For example, professional services may include: development of design concepts; preparation of design and construction documents, work write-ups, and cost estimates; evaluation of construction bids; inspection of materials and workmanship during construction; notifying the contractor and the PHA of problems observed; and certification that construction is being performed in accordance with the construction contract.

8-2. SELECTION PROCESS.

- a. Competitive Negotiation. The PHA shall obtain professional services through the competitive negotiation process. The objective of this process is to allow the PHA to identify the two or three most highly qualified architects/engineers or architectural/engineering firms and then to negotiate a contract with the most highly qualified firm which will provide the required services at a fair and reasonable cost.
- b. Applicability. The competitive negotiation process shall apply to all modernization-funded contracts except where:
  - (1) Waived by the Field Office, up to a maximum of \$5,000. However, such waiver should be within the amount at which the PHA is allowed to certify under paragraph 8-5;
  - (2) FFY 1981 or subsequent year funds are being used to finance additional services under an existing contract in connection with the completion of an ongoing modernization program at a particular project; or
  - (3) FFY 1980 or prior year funds are being used to finance a contract which has not yet been executed, but for which the PHA has initiated discussions with a particular architect/engineer before May 21, 1982.
- c. Invitation. The PHA shall invite architects/engineers or firms to submit information on architectural/engineering services. The invitation shall include: the project(s) to be modernized; the general scope of the work; the extent of professional services requested; the submission deadline;

and the PHA contact person. The invitation shall request the architect/engineer, if interested, to respond with a letter of interest, demonstration of understanding of the modernization, evidence of firm's ability to perform the work, evidence that, where design work is involved, the architect/engineer is registered or licensed to perform the required services in the State where the project is located, profiles of firm's principals, staff and facilities, and a certified statement that the architect/engineer or firm is not debarred, suspended or otherwise prohibited from professional practice by any Federal, State or local agency. The invitation may be accomplished through: public announcement in local newspapers; direct requests to architects/engineers in the PHA's files, which the PHA or other PHAs have previously retained; use of a list of names or firms secured from local professional societies; and use of techniques set forth in paragraph 6-2c for minority architects/engineers.

- d. Evaluation of Responses. The PHA shall evaluate all responses to the invitation and eliminate those that are obviously unqualified to provide the required services. The PHA shall select the two or three most highly qualified names or firms and rank them in a one-two-three order, according to qualifications and preference, in accordance with the following criteria:
- (1) Professional and technical competence and experience;
  - (2) Capability to provide professional services in a timely manner;
  - (3) Knowledge of local building codes; and
  - (4) General response to the invitation.
- e. Comprehensive Proposal. Once the architects/engineers or firms have been ranked, the PHA shall invite the first ranked firm to submit a written comprehensive proposal and shall arrange for any necessary meetings to allow for evaluation and modification of the original proposal, if necessary. If the PHA fails to reach agreement with the first ranked firm, the PHA shall follow the same procedure with the second and third ranked firms until it obtains agreement with the most qualified firm at a fair and reasonable cost. The agreement should cover the specific services to be pro-

vided, time and order of services, staffing requirements, areas of responsibility and liability, and fee structure, including amount and method of payment.

- 8-3. FORM OF AGREEMENT. When the PHA and the architect/engineer reach agreement, the agreement shall be placed in writing. The use of Form HUD-51915, Agreement Between Owner and Architect, revised July 1973, is not mandatory, but is more appropriate where modernization involves new construction. Where modernization does not involve new construction, the PHA may obtain appropriate forms from the American Institute of Architects, the Consulting Engineers Council, and other professional organizations. However, the Field Office will generally provide the PHA with Form HUD-51915, appropriately modified for modernization. If Form HUD-51915 is not used, the contract shall contain the provision that all drawings and specifications furnished by the architect shall become the property of the PHA upon their approval in writing by the PHA, or upon the prior termination of the architect's/engineer's services (see paragraph 9.13 of Form HUD-51915). Regardless of the form used, the contract shall require the architect/engineer to certify that all drawings and specifications accurately reflect HUD-approved work and meet the Modernization Standards or the intent of the Minimum Property Standards, whichever applies.
- 8-4. COMPENSATION. Architectural/engineering fees shall be consistent with those which prevail for similar projects and services in the area (see paragraph 6-8e).
- a. Rehabilitation. Where the modernization does not require design services for new construction, the PHA shall use a lump sum fee or a fee of approximately 2-1/2 times direct personnel expense with a predetermined maximum consideration. If a lump sum fee is used, fees shall reflect the degree or nature of the services to be rendered.
  - b. New Construction. Where the modernization requires design services for new construction, the PHA shall use a percent of the estimated modernization cost, an hourly rate, per sheet fee or lump sum amount.
  - c. Considerations. In determining fees, consideration shall be given to: the scope of basic and additional services; type of project, size, and complexity of design; extent that previously completed architectural drawings are being used; extent that prefabricated or modular components are being used; extent that modernization work involves multiple

repetition of the same basic design or replacement of equipment; and number of construction contracts to be administered.

8-5. PHA CERTIFICATION. Upon selecting and reaching agreement with the architect/engineer, the PHA shall prepare and execute each contract without prior Field Office review and approval, unless the contract exceeds the dollar threshold that may have been established by the Field Office (see paragraphs 7-1 and 8-6). Where HUD approval is not required, the designated PHA official shall certify in writing to the following and send a copy of the certification to the Field Office:

- a. The scope of the work is consistent with the PHA's assessment of its needs for professional services and with any agreements reached with the Field Office during or subsequent to the Joint Review;
- b. The fee is appropriate to the work to be performed and does not exceed the approved budget amount; and
- c. If applicable, the competitive negotiation process was used to obtain the professional services.

8-6. HUD-ESTABLISHED THRESHOLD. Based on an assessment of the PHA's past performance in preparing architect's/engineer's contracts and in-house technical capability, the Field Office may establish a dollar threshold over which the PHA shall submit architect's/engineer's contracts for prior Field Office review and approval. For modernization programs approved before FFY 1982, where the PHA has not yet submitted the architect's/engineer's contract for prior Field Office review and approval, the HUD-established threshold shall apply.

a. Criteria. In determining the appropriate dollar threshold for PHA submission, the Maintenance Engineer shall consider the following criteria:

(1) Past Performance in Preparing Contracts. In the past:

- (a) The scope of the work was consistent with the PHA's assessment of its needs for professional services and with any agreements reached with the Field Office during or subsequent to the Joint Review; and
- (b) The fee was appropriate to the work to be performed and did not exceed the approved budget amount.

(2) In-House Technical Capability. The PHA has experienced staff who are capable of reviewing proposed architect's/engineer's contracts.

b. Notification to PHA. After completing the assessment, the Maintenance Engineer shall prepare a letter for the signature of the Field Office Manager or designee, advising the PHA of the established dollar threshold over which architect's/engineer's contracts are required to be submitted for prior Field Office approval and the reasons.

8-7. HUD REVIEW AND APPROVAL.

a. Review and Approval. Where submitted by the PHA, the Field Office Maintenance Engineer shall promptly review the proposed architect's/engineer's contract. This review shall ascertain that the proposed scope of work is consistent with the PHA's assessment of its physical needs and staffing requirements and that the fee schedule is appropriate for the work to be performed. As needed, the Maintenance Engineer shall consult with other Field Office staff, such as Counsel, and may inform the PHA by telephone of any required changes or deficiencies. Within 15 calendar days of receipt of the proposed contract, the Maintenance Engineer shall prepare a letter to the PHA for the signature of the Director, Housing Management Division, or designee, advising the PHA of any required changes or authorizing the PHA to proceed with execution.

b. Monitoring. The Maintenance Engineer shall periodically review the PHA's invitation and evaluation of responses, through on-site review of PHA files, to ensure that the PHA is following the competitive negotiation process. The Maintenance Engineer also shall periodically review copies of executed contracts, including the PHA certification where prior Field Office approval was not required, and the PHA's in-house technical capability to determine whether there has been a change in capability which would warrant a higher or lower dollar threshold. If deficiencies are found, the Field Office monitoring letter (see paragraph 11-13a(3)) may require the PHA to submit proposed architect's/engineer's contracts over a reduced threshold to the Field Office for review and approval before execution.

8-8. ABANDONMENT OR TERMINATION. In the event of abandonment of the project or termination of the contract for any cause, under the respective sections of the contract, the terms of any settlement between the PHA and the architect shall be subject to Field

(2) In-House Technical Capability. The PHA has experienced staff who are capable of reviewing proposed architect's/engineer's contracts.

- b. Notification to PHA. After completing the assessment, the Maintenance Engineer shall prepare a letter for the signature of the Field Office Manager or designee, advising the PHA of the established dollar threshold over which architect's/engineer's contracts are required to be submitted for prior Field Office approval and the reasons.

8-7. HUD REVIEW AND APPROVAL.

- a. Review and Approval. Where submitted by the PHA, the Field Office Maintenance Engineer shall promptly review the proposed architect's/engineer's contract. This review shall ascertain that the proposed scope of work is consistent with the PHA's assessment of its physical needs and staffing requirements and that the fee schedule is appropriate for the work to be performed. As needed, the Maintenance Engineer shall consult with other Field Office staff, such as Counsel, and may inform the PHA by telephone of any required changes or deficiencies. Within 15 calendar days of receipt of the proposed contract, the Maintenance Engineer shall prepare a letter to the PHA for the signature of the Director, Housing Management Division, or designee, advising the PHA of any required changes or authorizing the PHA to proceed with execution.
- b. Monitoring. The Maintenance Engineer shall periodically review the PHA's invitation and evaluation of responses, through on-site review of PHA files, to ensure that the PHA is following the competitive negotiation process. The Maintenance Engineer also shall periodically review copies of executed contracts, including the PHA certification where prior Field Office approval was not required, and the PHA's in-house technical capability to determine whether there has been a change in capability which would warrant a higher or lower dollar threshold. If deficiencies are found, the Field Office monitoring letter (see paragraph 11-13a(3)) may require the PHA to submit proposed architect's/engineer's contracts over a reduced threshold to the Field Office for review and approval before execution.

8-8. ABANDONMENT OR TERMINATION. In the event of abandonment of the project or termination of the contract for any cause, under the respective sections of the contract, the terms of any settlement between the PHA and the architect shall be subject to Field

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Office approval. The PHA shall not disburse any monies to the architect after the giving of notice of abandonment or termination until the Field Office has approved the settlement agreement.

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CHAPTER 9. CONTRACT ADMINISTRATION

Section 1. General

- 9-1. INTRODUCTION. This Chapter sets forth the requirements for modernization construction contracts and contracts for management improvements. To the maximum extent possible, the requirements of this Chapter shall apply to modernization programs approved before Federal Fiscal Year (FFY) 1982. A Sample Modernization Contract Status Control Log for Field Office use is attached as Appendix 19.

Section 2. Construction and Bid Documents

- 9-2. PHA PREPARATION. The PHA shall prepare the construction and bid documents as follows:
- a. General. The PHA and its architect shall ensure that the construction and bid documents comply with State, tribal or local laws governing the public solicitation of bids. Any modifications required to comply with such laws should be discussed with Regional or Chief Counsel to ensure that such changes are not in conflict with Federal requirements.
  - b. Competitive Bidding. For each construction or equipment contract over \$10,000, the PHA shall conduct formal advertising, except where equipment is to be purchased through the HUD Consolidated Supply Program. For each construction or equipment contract of \$10,000 or less, the PHA shall follow the solicitation requirements set forth in the Procurement Handbook 7460.8.
  - c. Invitation for Bids. The invitation for bids shall be prepared in the form prescribed by the Field Office for public advertising and solicitation of bids. The bid holding period shall be specified.
  - d. Instructions to Bidders. Form HUD-5369, Instructions to Bidders, shall be used to inform interested contractors of the general bidding requirements, the responsibilities of each party, and the factors to be considered in determining the successful bidder.
    - (1) Bid Guaranty. For all construction and equipment contracts over \$10,000, the bidder shall be required to submit with the bid a bid guaranty not less than 5 percent of the amount of the bid. The bid guaranty may be a certified check, bank draft,

U.S. Government Bonds at par value or a bid bond secured by a surety company. If the bid guaranty is not submitted with the bid, the PHA shall reject the bid. However, in an effort to promote minority and women's business, Headquarters will consider a PHA request for a waiver of the bid guaranty requirement, on a case-by-case basis, before bid advertisement, if the request is submitted through and supported by the Field and Regional Offices.

- (2) Non-Collusive Affidavit. For all construction and equipment contracts over \$10,000, the bidder shall be required to submit with the bid a non-collusive affidavit. If the affidavit is not submitted by the low bidder with the bid, the PHA shall require submission within 3 working days. If the affidavit is submitted after that date, the bid shall be considered non-responsive. No contract award shall be made without a properly executed non-collusive affidavit.
- (3) Previous Participation Certificate. For all construction and equipment contracts over \$50,000, except where equipment is to be purchased through the HUD Consolidated Supply Program, the bidder shall be required to submit with the bid Form HUD-2530, Previous Participation Certificate. If the Certificate is not submitted by the low bidder with the bid, the PHA shall require submission within 3 working days. If the Certificate is submitted after that date, the bid shall be considered non-responsive. No contract award shall be made without a properly executed Certificate.
- (4) Performance And Payment Bond. For all construction or equipment contracts over \$10,000, the contractor shall be required to furnish a performance and payment bond for 100 percent of the contract price or, as may be required by law, separate performance and payment bonds, each for 50 percent or more of the contract price, or a 20 percent cash escrow or a 25 percent letter of credit. To the extent permitted under State law, all three options shall be set forth in the bid documents.
  - (a) The surety must be a guaranty or surety company acceptable to the PHA. Individual sureties shall not be considered. U.S. Treasury Circular No. 570, published annually in the Federal Register,

lists companies approved to act as surety on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which each company is licensed to do business. Use of this Circular is mandatory. The PHA may obtain a free copy of this Circular by writing directly to the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department, Washington, D.C. 20226.

- (b) Section 911 of the HUD Act of 1970 authorizes the Small Business Administration to provide a 90 percent guarantee on contracts of \$1,000,000 or below to any surety company that will provide bid or performance bonds and payment to the small construction contractor.
- (5) Section 3 of HUD Act of 1968. Instructions to Bidders shall be modified to include the requirement that any contractor awarded a contract over \$500,000 and any subcontractor awarded a contract over \$50,000 shall comply with 24 CFR Part 135 implementing Section 3 (see paragraph 6-1c).
- (6) Lead-Based Paint Prohibition. Instructions to Bidders shall be modified to include the requirement that any contractor awarded a contract for modernization shall comply with 24 CFR Part 35 prohibiting the use of lead-based paint.
- e. Construction Contract. The construction contract shall be prepared in the form prescribed by the Field Office and shall include Form HUD-5370, General Conditions. In preparing the construction contract, consideration shall be given to the following:
- (1) Changes. Any changes in the General Conditions shall be made by appropriate amendment written into the Special Conditions. Since some provisions of the General Conditions reflect Federal statutes, Executive Orders or established HUD policy and must be incorporated verbatim and without qualifications, proposed modifications should be discussed with the Regional or Chief Counsel before they are drafted. The PHA is responsible for recognizing a need for modification of the printed General Conditions and also for conforming the contract documents with State, tribal and local laws.

- (2) Separate Construction Contracts. Main construction work should be performed under a single construction contract. The PHA may obtain separate bids for portions of the work where required by State law or in the best interest of the modernization of the project. Where separate bidding is used, it is most important that the scope of work under each contract be clearly defined without gaps or overlapping of work specified in related contracts and that the PHA have the capability to administer separate contracts.
- (3) Project Completion Time. A realistic construction period should be determined for the contract. Such things as type of construction, project size and location, season and prospective weather conditions, and availability of skilled labor and materials should be considered.
- (4) Liquidated Damages. A liquidated damage rate shall be established which will reasonably approximate the loss which might be sustained by the PHA through failure of the contractor to complete the project on time. This includes loss of rental income, increased administrative costs, interest and carrying charges, and other expenses related to the period of delay in modernization of the project. An unreasonably high rate of liquidated damages may discourage bidders, result in higher bids, and be construed as a penalty. An unreasonably low rate may encourage late completions.
- (5) Wage Requirements. The Davis-Bacon wage rates determined by the Department of Labor and provided by the Regional or Field Office or the HUD-determined wage rates shall be incorporated in the Special Conditions without modification (see paragraph 6-8). All documentation should be prepared so as to permit inclusion of the wage rates as soon as they are received.
- (6) Equipment. Equipment, such as ranges, water heaters and refrigerators, may be acquired through the HUD Consolidated Supply Program, through separate contracts, or included in the main construction contract. Use of either of the first two methods is recommended. If the main construction contract is to include the installation, but not the purchase, of dwelling equipment, the contract must include proper provision for

reception of the items and appropriate coordination clauses. If the equipment is purchased by methods other than the Consolidated Supply Program, the PHA should ensure that price and warranty are equivalent to that available through the Consolidated Supply Program.

- (7) Demolition. Whenever feasible, demolition work should be included in the main construction contract. If this is not done, the standard bidding documents may be used with minor modifications for demolition work. Since there may be salvage value, the form of bid should allow for the possibility of a sum being deducted (equal to the salvage value) from the amount to be paid to the contractor.

9-3. PHA CERTIFICATION. The PHA shall invite bids without prior Field Office review and approval, unless the estimated contract exceeds the dollar threshold that may have been established by the Field Office (see paragraphs 7-1 and 9-4) or a "brand name" product is specified without an "or equal" clause. Where HUD approval is not required, the designated PHA official shall certify in writing to the following and send a copy of the certification to the Field Office:

- a. The PHA has obtained the required certification from the architect/engineer (see paragraph 8-3);
- b. The construction documents accurately reflect HUD-approved work and meet the Modernization Standards or the intent of the Minimum Property Standards, whichever applies; and
- c. The bid documents are complete and include all mandatory provisions, including the correct wage rates.

9-4. HUD-ESTABLISHED THRESHOLD. Based on an assessment of the PHA's past performance in modernization contracting and in-house technical capability, the Field Office may establish a dollar threshold over which the PHA shall submit construction and bid documents for prior Field Office review and approval. For modernization programs approved before FFY 1982, where the PHA has not yet submitted the construction and bid documents for prior Field Office review and approval, the HUD-established threshold shall apply.

- a. Criteria. In determining the appropriate dollar threshold for PHA submission, the Maintenance Engineer shall consider the following criteria:

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- (1) Past Performance in Modernization Contracting. In the past:
- (a) Construction documents (working drawings and construction specifications) have accurately reflected HUD-approved work and have met the Modernization Standards which apply to modernization approved after FFY 1980 or the intent of the Minimum Property Standards which apply to modernization approved before FFY 1981;
  - (b) Bid documents have been complete and have included all mandatory provisions, including the correct wage rates; and
  - (c) Bid advertisement has been conducted in compliance with State, tribal or local laws and Federal requirements governing public solicitation of bids.
- (2) In-House Technical Capability. The PHA has a staff architect/engineer who is capable of preparing the construction and bid documents or experienced staff who are capable of reviewing the documents prepared by an outside architect/engineer.

- b. Notification to PHA. After completing the assessment, the Maintenance Engineer shall prepare a letter for the signature of the Field Office Manager or designee, advising the PHA of the established dollar threshold over which construction and bid documents are required to be submitted for prior Field Office approval and the reasons. Where prior Field Office approval is required, the letter shall indicate whether HUD review pertains to only the preliminary or to both the preliminary and final plans and specifications.
- c. Submission. Where required, the PHA shall submit complete construction (working drawings and construction specifications) and bid documents for each proposed modernization contract to the Field Office, Attention: Chief, Assisted Housing Management (AHM) Branch, for review and approval before inviting bids.

9-5. HUD REVIEW AND APPROVAL.

- a. Review. Where submitted by the PHA, the Maintenance Engineer shall promptly review the construction and bid documents to ensure that they have been completed in

accordance with prior approvals, meet the applicable standards, include all mandatory provisions, and are ready for issuance. As necessary, the Maintenance Engineer shall solicit technical advice from other Field Office specialists, such as the Labor Relations staff on the wage rates and the Fair Housing and Equal Opportunity (FH&EO) Division on requirements related to Executive Order 11246, as amended, and Section 3 of the HUD Act of 1968, as amended, including the appropriate Appendix A for Bid Condition Areas (see Handbook 8020.1, Chapter 5). The Maintenance Engineer also shall work with the PHA and its architect to reach agreement on any points in question.

- b. Action. The Field Office review shall be completed and the PHA advised of the results within 15 calendar days of receipt of the construction and bid documents. When the documents are in proper order, the Maintenance Engineer shall prepare a letter to the PHA for the signature of the Director, Housing Management Division, or designee, indicating approval of the documents, with or without modification, authorizing the PHA to issue the Invitation for Bids, and transmitting the wage rates. Where appropriate, the Regional or Chief Counsel shall concur in the letter.
- c. Monitoring. The Maintenance Engineer shall periodically review copies of the construction and bid documents, including the PHA certification where prior Field Office approval was not required, through on-site review of PHA files. The review shall determine whether the documents met the criteria set forth in paragraph 9-4a(1) and did not result from splitting bids to avoid prior HUD review and approval. The Maintenance Engineer also shall periodically review the PHA's in-house technical capability to determine whether there has been a change in capability which would warrant a higher or lower threshold. If deficiencies or evidence of abuse of the established threshold is found, the Field Office monitoring letter (see paragraph 11-13a(3)) may require the PHA to submit construction and bid documents for each proposed modernization contract over a reduced threshold to the Field Office for review and approval before inviting bids.

Section 3. Bid Advertisement and Contract Award

- 9-6. INVITATION FOR BIDS. Where prior Field Office approval is required, the PHA shall immediately publish an invitation for bids upon receipt of the Field Office approval letter, but only

if a copy of the wage rates is attached. Where prior Field Office approval is not required, the PHA shall publish the invitation immediately upon receipt of the Field Office letter transmitting the wage rates.

a. Bid Package. The PHA shall prepare a standard bid package. Each copy of the bid package shall be numbered sequentially for control purposes. A copy of the complete bid package shall be provided to each bidder whether or not bids are being invited for a single construction contract or separate trade (e.g., plumbing, electrical, mechanical) contracts. The standard bid package shall consist of the following:

- (1) Cover sheet identifying the PHA, project number, job number, and general scope of work;
- (2) PHA invitation for bids, including the day, time and place that bids will be opened;
- (3) Form HUD-5369, Instructions to Bidders;
- (4) Form HUD-5370, General Conditions, and Special Conditions;
- (5) For contracts over \$50,000, Form HUD-2530, Previous Participation Certificate, marked "Modernization," to be submitted to the PHA;
- (6) Bound construction specifications;
- (7) Bound working drawings;
- (8) Correct wage rates;
- (9) Bid form to be submitted to the PHA;
- (10) Bid bond form to be submitted to the PHA;
- (11) Non-collusive affidavit to be submitted to the PHA;
- (12) Contract form; and
- (13) Performance and payment bond form.

b. Publication. The PHA shall give full opportunity for open and competitive bidding by publishing the invitation for bids at least once a week for two consecutive weeks in local newspapers and trade journals. See paragraph 6-2c

regarding publicizing invitations for bids to Minority Business Enterprises (MBEs). The PHA also shall extend an invitation to contractors who have previously expressed an interest to participate in modernization to the PHA or the Field Office.

- c. Bid Period. The PHA shall establish a deadline date for acceptance of bids which allows sufficient time for bidders to evaluate the bid package, estimate costs, and submit their bids to the PHA. The bid period is no longer required to be for 30 calendar days, where appropriate, but shall not be for less than 10 calendar days. In any event, the bid period shall be for at least the number of days required by State or local law. Furthermore, for projects being modernized under a single construction contract, the bid period should be at least 30 calendar days from the date of publication of the initial invitation for bids. However, if an addendum is issued within 7 calendar days of the deadline date, the bid opening shall be postponed for at least 7 calendar days from the date of the addendum.
- d. Deposit. The PHA shall require a deposit in an amount that is based on local practice, but at least sufficient to offset the cost of reproducing a copy of the bid package. A deposit is not required for bid packages issued to a builder's exchange or similar building service organization. All deposit checks or drafts shall be made payable to the PHA.
- e. Alternate Bids. The PHA should not request alternate bids for major project components (e.g., two different structural systems), "deductive alternatives" or a "base bid with add-ons" (not including alternate materials and equipment to the extent provided in the construction specifications), unless the relative advantage and comparative costs of the alternatives are difficult to determine without going to the competitive bidding process.
- f. Addendum to Bid Package. The PHA shall issue changes to the standard bid package in the form of an addendum. The PHA shall not interpret the meaning of bid documents except by addendum. Each addendum shall be numbered sequentially and a copy provided to each bidder of record, to each place where bidding documents are on file and to the Field Office, only where the PHA is required to submit construction and bid documents before advertisement. The addendum also shall specify, if applicable, the revised deadline date for submission of bids.

- g. Control Record. The PHA shall maintain, or authorize its architect to maintain, a record of all bidding documents. This record shall identify the following for each individual or firm that requested a bid package: the bid package control number; the name and address of the individual or firm; if applicable, the number of the addendum and date sent; the amount of deposit and the date received, including the return or forfeiture of the deposit; the date and time the bid was received; and the date the individual or firm was notified as to the successful low bidder.

9-7. BID OPENING AND EVALUATION.

- a. Bid Opening. The PHA shall not open the bids until the date and time specified in the invitation for bids. Upon receipt of each bid (including late bids), the PHA shall mark the date and time on the envelope. The bids shall be opened in public and read aloud at the specified time and place. Any bids received after the date and time specified in the invitation for bids shall not be opened and shall be returned to the bidder with a letter indicating that the bid was not received by the specified deadline.
- b. Bid Rejection or Withdrawal. After the public opening, the PHA may allow any bidder to withdraw a bid or may reject or disqualify the lowest bidder.
- (1) Withdrawal. If a bidder seeks to withdraw a bid before the end of the bid holding period or the execution date of the contract, whichever is earlier, the PHA shall secure the following before approving or disapproving the withdrawal request: a notarized statement from the bidder indicating that an error was made with an explanation of how it occurred; a copy of the bidder's cost estimating worksheets or other evidence provided by the bidder in support of the withdrawal request; and a legal opinion prepared by the PHA's attorney indicating whether or not the bidder is bound by the bid.
- (2) Rejection. The PHA shall reject any bid that is incomplete, e.g., where the bid guaranty is not submitted with the bid. (For the exceptions on the non-collusive affidavit and the Previous Participation Certificate, see paragraphs 9-2d(2) and (3), respectively.) If the PHA proposes to reject the lowest bidder for reasons other than an incomplete bid, the PHA shall notify the bidder of the reasons and provide the bidder an opportunity to submit supporting evidence, within a specified time, as to why the bid should not

be rejected. After the specified time, the PHA shall make a final decision.

- (3) Bidder Notification. The PHA shall notify the bidder as to whether or not the withdrawal request has been approved or disapproved or whether or not the bid has been rejected. If appropriate, the PHA also shall return the bid guaranty to the bidder.
- c. Rejection of All Bids. The PHA may decide, because of the high bids received or other justifiable causes, to reject all bids.
- (1) Reasons for Rejection. The PHA and its architect shall review the bids received to determine the reason that the contract cannot be awarded. The purpose of this review is to ascertain that: the bid amount exceeds the approved budget amount; the bids are unreasonably high due to unusual circumstances affecting construction in the housing market area; the project is overdesigned; or the award cannot be made for other causes that are identified.
  - (2) Overdesign. If it is determined that the high bids are due to project overdesign, the PHA and its architect shall identify design modifications that would likely result in lower bids. Where required under paragraph 9-4, the PHA shall submit revised construction documents for prior Field Office review and approval. The PHA architect shall be held responsible for making any design modifications under the terms of the architect's contract.
  - (3) Invitation for Bids. Upon Field Office approval of the revised construction documents, where required, the PHA shall be authorized to issue a subsequent invitation for bids.

9-8. PHA SUBMISSION AND CERTIFICATION.

a. Requirement. After bid opening, the PHA shall:

- (1) In all cases, clear the lowest responsible bidder with the Field Office for check against the HUD Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees;

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- (2) For contracts over \$50,000, submit Form HUD-2530, prepared by the lowest responsible bidder, to the Field Office, Attention: Processing Control and Reports (PCR) Supervisor for previous participation review; and
  - (3) If the bid amount exceeds the approved budget amount or the PHA receives a single bid, submit the following documents to the Field Office, Attention: Chief, AHM Branch, for review and approval before awarding the contract.
    - (a) Bid tabulation, identifying the following for each bid received by the PHA: the name and address of the bidder; the amount of the bid; and the amount and type of bid guaranty.
    - (b) Bid, including a copy of the bid guaranty and non-collusive affidavit, that the PHA proposes to accept.
- b. Award Without Prior Field Office Approval. Except as required in subparagraph a, the PHA may award the contract without prior Field Office approval if the designated PHA official has certified in writing that:
- (1) The bid advertisement and contract award were conducted in compliance with State, tribal or local laws and Federal requirements, including 24 CFR 805.204, Indian preference in contracting for IHAs;
  - (2) The award does not exceed the approved budget amount and is not being made on the basis of a single bid;
  - (3) The award has been cleared with the Field Office to determine that the contractor is not on the HUD Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees; and
  - (4) The award has been cleared by the Field Office under the previous participation review process, where the contract exceeds \$50,000.

9-9. HUD REVIEW AND APPROVAL.

- a. Technical Review. Where submitted by the PHA, the Maintenance Engineer shall consult with the HMO regarding any required budget revisions and review contract award documents to determine that the proposed award is in

proper order. The Maintenance Engineer shall check the HUD Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees to ensure that the contractor is not on the List.

- b. Previous Participation Review. Upon receipt of Form HUD-2530, PCR shall distribute Form HUD-2530 and Form HUD-2530-RC, Report Card, to appropriate Field Office staff for review and comment. Within 5 working days, PCR shall notify the Chief, AHM Branch, of any comments received on the Report Cards. See the Previous Participation Handbook 4065.1.
- (1) If there are no adverse findings, PCR shall send Form HUD-2530 to the Field Office Manager for approval. After approval, PCR shall send the original of Form HUD-2530 to the Participation Control Officer in Headquarters and a copy to the AHM Branch. Either PCR or the AHM Branch shall promptly notify the PHA of approval.
  - (2) If there are adverse findings, PCR shall notify the Director, Housing Management Division. The Director, Housing Management Division, or designee, shall review and discuss the findings with appropriate Field Office staff, including the Regional or Chief Counsel. The Director, Housing Management Division, or designee, shall alert the Participation Control Officer in Headquarters that Form HUD-2530 will be transmitted and to provide information on when the bid holding period expires. The Director, Housing Management Division, or designee, shall immediately transmit Form HUD-2530 and related documents to the Participation Control Officer.
- c. Action. The Field Office review shall be completed and the PHA advised of the results within 10 calendar days of receipt of the proposed contract award documents, unless Headquarters approval of Form HUD-2530 is required. When the contract award documents are in proper order, the Maintenance Engineer shall prepare a letter to the PHA for the signature of the Director, Housing Management Division, or designee, authorizing the PHA to award the contract and requiring the PHA to submit any budget revisions.
- d. Monitoring. The Maintenance Engineer shall periodically evaluate the bids opened and the contracts awarded by

the PHA, including the PHA certification where prior Field Office approval was not required, through on-site review of PHA files. If deficiencies are found, the Field Office monitoring letter (see paragraph 11-13a(3)) may require the PHA to submit proposed contract award documents in all or specified instances to the Field Office for review and approval before contract award.

- 9-10. PHA CONTRACT AWARD. Upon receipt of the Field Office letter authorizing contract award or the Field Office approval under the previous participation review process, including the debarment check, the PHA shall contact the successful bidder (if separate trade contracts are to be executed, the PHA shall contact each successful bidder) to schedule a date for execution of the contract.
- a. Contractor Notification. The PHA shall send a registered letter to the successful bidder indicating: the date, time, and place scheduled for PHA and contractor execution of the contract; the contractor must provide a performance and payment bond (or other assurance) in the amount identified in Form HUD-5369, Instructions to Bidders; and the bond shall bear the same date or a date after the date of execution of the contract and shall be accompanied by a properly executed power of attorney by the bonding company to its authorized agent.
  - b. Contract Execution. Before executing the contract, the PHA shall ensure that the performance and payment bond (or other assurance) meets the requirements of the Instructions to Bidders. The PHA shall prepare three original sets of the contract documents (i.e., construction contract, bound construction specifications, bound working drawings, and addenda). The PHA and contractor (including trade contractors if separate construction contracts are to be executed) shall sign the first and last page of the three sets of construction specifications, working drawings and any applicable addenda. If separate trade contracts are to be executed, each trade contractor also shall sign the first and last page of the applicable trade division of the construction specifications.
  - c. Distribution of Executed Documents. The PHA shall retain one original copy of the performance and payment bond (or other assurance), power of attorney, and a signed set of the contract documents for its files. The PHA shall send one copy to the Field Office, Attention: Chief, AHM Branch, and retain the contractor's copy for attachment to the PHA's notice to proceed.

- d. Department of Labor Notification. Within 10 calendar days of contract award (including subcontracts) for each contract of \$10,000 or more, the PHA 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, as amended, and shall include: the name, address, and telephone number of the contractor; the employer identification number; the dollar amount of the contract; the estimated construction start and completion dates; and the project number(s) and community in which the project(s) is located.
- e. Preconstruction Conference. Where appropriate, the PHA shall schedule a date for a preconstruction conference to be held at the PHA. The conference date may be the same, or within 10 calendar days from the date of contract execution. The purpose of the preconstruction conference is to provide for the timely modernization of the project by eliminating any misunderstanding of HUD regulations and procedures, contract requirements, and responsibilities of the PHA, its architect, the contractor and the Field Office. In scheduling the preconstruction conference, the PHA shall consult with its architect, the contractor, and the Maintenance Engineer, if appropriate, to arrange a date that is acceptable to all parties.
- f. Notice to Proceed. The PHA shall prepare two original copies of the notice to proceed to be issued to the contractor, together with the contractor's set of the executed contract documents. The notice to proceed is the official PHA order directing the contractor to start work on the project. The contractor shall be requested to sign the notice to proceed, designating receipt and acceptance, and return one signed original to the PHA.

#### Section 4. Contract Administration Responsibilities

- 9-11. PHA RESPONSIBILITIES. The PHA is responsible for enforcing the architect's contract and the construction contract and for ensuring retention of all contractual rights. PHA staff assigned these responsibilities shall be included in the Modernization Organization and Staffing Plan, required in paragraph 3-16c.
- a. Contracting Officer. The PHA shall designate an employee as its contracting officer. The scope and limitation of the contracting officer's responsibility shall be identi-

fied in writing and copies shall be provided to its architect and the contractor.

- b. Contract Administrator. The PHA shall designate a qualified professional to administer the contract. The PHA architect may be designated as the contract administrator.
- c. Insurance. The PHA shall comply with the insurance requirements set forth in paragraph 6-9.
- d. Reports. The PHA shall obtain the reports and construction documents required by the contract and the Field Office from its architect and the contractor. The PHA shall retain these reports and, as required, send a copy to the Field Office.
- e. Inspections. See paragraphs 11-11 and 11-12.
- f. Construction Progress Meetings. The PHA shall meet with its architect and the contractor on a regular basis to discuss the progress of modernization work, any problems or deficiencies noted during inspection visits, overdue reports and the construction schedule. The PHA shall prepare a written record of the items discussed at each meeting and place a copy in its construction file.
- g. Correction of Deficiencies. Upon being notified by its architect or the Maintenance Engineer of construction deficiencies, the PHA shall promptly notify the contractor in writing of the deficiencies observed. This notification also shall advise the contractor that failure to make timely corrections would be an infraction of the contract and that the contractor is liable for any resulting losses or delays.

- 9-12. HUD RESPONSIBILITIES. The Field Office is responsible for ensuring that the PHA, in accordance with the terms of the ACC, is enforcing the architect's contract and the construction contract, including the construction documents. See paragraph 11-13 regarding inspections by the Field Office. The Field Office shall provide technical assistance and guidance to the PHA concerning contract administration and enforcement, reporting, interpretation of construction documents and other related matters.

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Section 5. General Requirements

- 9-13. SUBCONTRACTORS. All contracts between the contractor and any subcontractors shall contain the equal opportunity employment requirements and the prevailing wage rate requirements.
- a. Identification. Each general contractor shall prepare and submit Form HUD-5371, Request for Acceptance of Subcontractor, to the PHA for approval before executing any subcontract. A separate Form HUD-5371 and non-collusive affidavit shall be submitted for each subcontractor, including suppliers of special fabricated materials for which shop drawings are required.
  - b. PHA Review. Within 10 calendar days of receipt of Form HUD-5371, the PHA shall return the completed form to the general contractor indicating PHA approval or disapproval. The PHA shall not approve any subcontractor whose name appears on the HUD Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees. The PHA, in consultation with its architect, shall disapprove the use of a specific subcontractor only for justifiable cause. A copy of each completed Form HUD-5371 shall be sent to the PHA contracting officer, whether approved or disapproved; and PHA architect, only if approved.
  - c. Stop work. The PHA shall notify the general contractor in writing to have a subcontractor stop work if such work is started before PHA approval of the subcontractor. The PHA also shall indicate that this is a violation of the contract and that the general contractor is liable for any losses or delays.
  - d. Field Office Monitoring. The Maintenance Engineer shall periodically evaluate the reasons for PHA disapproval of subcontractors through on-site review of PHA files. If deficiencies are found, the Field Office monitoring letter (see paragraph 11-13a(3)) may require the PHA to forward copies of each completed Form HUD-5371, where disapproved, to the Field Office.
- 9-14. CONTRACTOR PAYROLL. The contractor is responsible for paying the correct wage rates to all employees engaged in work under the contract and ensuring that any subcontractors also pay the correct wage rates (see paragraph 6-8). The contractor is no longer required to submit Form HUD-5282, Certificate from Contractor Appointing Officer or Employee to Supervise Payment of Employees.

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- a. Payroll Report. The contractor shall submit a certified payroll report and compliance statement to the PHA each week during the contract period, i.e., from execution of the contract to contract completion and acceptance by the PHA. A separate payroll report shall be submitted for the contractor and each subcontractor.
- b. Payroll Forms. The contractor's report may be submitted on the Payroll Form (WH-347) and Statement of Compliance (WH-348). Such forms may be obtained from the Government Printing Office, Washington, D.C. 20402. The contractor may substitute computer generated forms, instead of the Payroll Form (WH-347), provided that all of the required information is included.
- c. Retention. The P.A shall retain all payroll reports for three years from the date of contract completion and acceptance by the PHA.
- 9-15. AS-BUILT DRAWINGS. The general contractor is responsible for providing all necessary information to the PHA architect in order that the PHA architect may prepare the as-built drawings. The PHA architect shall provide the PHA with a copy of the as-built drawings for its file upon contract completion. These drawings shall include all significant deviations from the working drawings approved by the PHA or the Field Office.
- 9-16. CHANGE ORDERS.
- a. Content. Changes in contract work shall be documented by a change order. A change order is a written agreement, executed by all parties to the contract, which describes the changes in work to be performed. Change orders shall be prepared in the form prescribed by the Field Office and shall include the following:
- (1) a detailed description of the proposed change in work;
  - (2) a reference to the applicable working drawings and specifications;
  - (3) a fixed price (credit, debit, or no change) for the change in contract work;
  - (4) an estimate of any additional time required to complete the work;

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- (5) the contractor's itemized breakdown of the cost of materials and labor and an itemized breakdown for any applicable subcontractors; and
- (6) the change indicated on the architectural drawings, if applicable.
- b. PHA Register. The PHA shall maintain a separate change order register for each contract. This is required to provide a permanent record of all actions taken in connection with each contract. The register shall identify:
- (1) the change order number;
  - (2) a brief description of the change;
  - (3) the cost of the proposed change;
  - (4) the date submitted to the Field Office, if applicable;
  - (5) any critical deadline dates that must be met by the Field Office;
  - (6) if applicable, the date of Field Office approval or disapproval and the action taken; and
  - (7) the amount of any additional time required by the contractor.
- c. Certification. The PHA may order or agree to a change order without prior Field Office review and approval, unless the change order, when added to previously approved change orders, would exceed the latest HUD-approved budget amount or the dollar threshold that may have been established by the Field Office (see paragraph 7-1). Where HUD approval is not required, the designated PHA official shall certify in writing that:
- (1) The proposed work is not included in the scope of the contract;
  - (2) The proposed work is necessary and economical;
  - (3) The proposed work is consistent with the Modernization Standards or the intent of the Minimum Property Standards, whichever applies;

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- (4) The proposed work cannot practicably be performed under a separate contract after completion of the contract;
- (5) Any additional time required for the proposed work is reasonable; and
- (6) Any additional costs can be approved within the latest approved budget and do not, when added to other change orders previously approved by the PHA, exceed the HUD-established threshold.
- d. HUD-Established Threshold. Based on an assessment of the PHA's past performance and in-house technical capability, the Field Office may establish a dollar or percentage threshold over which the PHA shall submit change orders for prior Field Office review and approval. For modernization programs approved before FFY 1982, where contract work is not yet complete, the HUD-established threshold shall apply.
- (1) Criteria. In determining the appropriate dollar or percentage threshold for PHA submission, the Maintenance Engineer shall consider the following criteria:
- (a) Past Performance in Reviewing Change Orders. In the past:
- 1 Proposed work has not been included in the scope of the contract;
  - 2 Proposed work was a necessity and in the PHA's interest;
  - 3 Proposed work was consistent with the Modernization Standards or the intent of the Minimum Property Standards, whichever applies;
  - 4 Proposed work could not practicably be performed under a separate contract after completion of the contract;
  - 5 Any additional time required for the proposed work was reasonable; and
  - 6 Any additional costs were approved within the latest approved budget.

- (b) In-House Technical Capability. The PHA has a staff architect/engineer or experienced staff who are capable of reviewing and approving/disapproving change orders.
- (2) Notification to PHA. After completing the assessment, the Maintenance Engineer shall prepare a letter for the signature of the Field Office Manager or designee, advising the PHA of the established dollar or percentage threshold over which change orders are required to be submitted for prior Field Office approval and the reasons.
- e. Submission. Where required, except in an emergency endangering life or property, the PHA shall submit change orders to the Field Office, Attention: Chief, AHM Branch, for review and approval before ordering or agreeing to any changes in the contract work.

9-17. HUD REVIEW AND APPROVAL OF CHANGE ORDERS.

- a. Review. Where submitted by the PHA, the Maintenance Engineer shall conduct a prompt review because changes often affect work progress. If the review indicates that the change is due to an act by the contractor contrary to, or failure to act in accordance with, the terms of the contract, or a mistake by the PHA architect in preparation of the construction documents not to be expected under professional standards or other laxity in carrying out the terms of the contract causing monetary damage to the PHA, the Maintenance Engineer shall consult the Regional or Chief Counsel for legal advice as to where responsibility lies. The Maintenance Engineer shall recommend action that is consistent with this legal advice. The Maintenance Engineer shall consult with the HMO regarding any required revisions to the program budget. To recommend approval, the Maintenance Engineer shall determine that the proposed change meets the criteria in paragraph 9-16c.
- b. Action. The Field Office review shall be completed and the PHA advised of the results within 10 calendar days of receipt of the change order. If the change order is approvable, the Director, Housing Management Division, or designee, shall approve the change order. If the change order is not approvable, the Maintenance Engineer shall prepare a letter to the PHA for the signature of the Director, Housing Management Division, or designee, advising the PHA of the reasons for disapproval.

- c. Monitoring. The Maintenance Engineer shall periodically review change orders approved by the PHA and the PHA register through on-site review of PHA files. If deficiencies are found, the Field Office monitoring letter (see paragraph 11-13a(3)) may require the PHA to submit proposed change orders over an established or reduced threshold to the Field Office for review and approval before issuance.

9-18 TIME EXTENSIONS. The contractor is responsible for completing the work within the time established in the contract. However, the PHA may authorize any time extensions without prior Field Office review and approval.

- a. PHA Records. Upon contract completion, the PHA shall determine the number of calendar days and reasons for any delays beyond the date established in the contract. The PHA shall maintain a record of potential causes for delays which will be used as the basis for granting time extensions or for determining the amount of liquidated damages to be assessed against the contractor. The PHA shall maintain a record of the following:

- (1) the daily temperature;
- (2) the daily amount of precipitation;
- (3) delays in obtaining labor and materials, including the duration and reason;
- (4) labor disputes or strikes, including the duration, and the applicable construction trade;
- (5) delays experienced by others in completing non-contract public improvements (whether on-site or off-site); and
- (6) other causes for delays, such as fires, floods, vandalism or court orders.

- b. Basis for Time Extensions. In order to be considered for approval by the PHA, requests for time extensions must meet the following criteria:

- (1) the contractor must have submitted a written notice to the PHA within 1 calendar days of the start of any delay;

- (2) the severity and extent of adverse weather could not have been reasonably foreseen by the contractor (normal seasonal levels of rain, snow, cold or heat should have been considered by the contractor) or the cause of the delay was beyond the contractor's control; and
- (3) any additional cost attributable to the delay is being borne by the contractor.

c. Contractor Request. Immediately upon receipt of the contractor's notification of delay or request for time extension, the PHA shall send a letter of acknowledgement to the contractor. The letter shall indicate that: immediate consideration will be given to the contractor's request; or the actual delay in work is difficult to determine and consideration will be given to the contractor's request upon completion of work.

d. PHA Finding of Fact. The PHA shall review its records to ensure that the information provided by the contractor is accurate, to determine the cause of the delay and the extent that it was within the contractor's control, and to ascertain if the request meets the criteria established in subparagraph b. Based on its review, the PHA shall prepare a "finding of fact" with the assistance of its architect and attorney and, in order to approve, determine that:

- (1) the contractor's request, as documented by ... "finding of fact," meets the requirements of subparagraph b;
- (2) the additional time requested by the contractor is reasonable based on the nature and duration of the delay; and
- (3) if there is some question of the contractor's liability for the delay, the PHA "finding of fact" shall be reviewed in accordance with paragraph 9-19.

9-19. DISPUTES AND CLAIMS. The PHA shall promptly notify the Field Office of any problems or disputes experienced during modernization which could result in a claim by its architect or the contractor. This may include claims for extra costs due to delays, claims for time extensions or extra costs based on PHA actions, or claims resulting from contract changes.

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- a. PHA Records. It is imperative that the PHA maintain a complete written and dated record of any actions that may result in a dispute or claim for damages. This is required to protect the PHA interest during any litigation proceedings that may subsequently arise. In such instances, the PHA shall, at a minimum, maintain the following: a complete and detailed job record; a disputes and claims file, crossreferencing other pertinent files, for each dispute or claim; and any correspondence relating to the dispute, including written minutes of any meetings, which identify actions taken by the PHA, its architect or contractor, and decisions or agreements made concerning the dispute.
- b. Contractor Notice. The contractor must submit a written notice of claim to the PHA within 10 calendar days from the date of the incident on which the claim is based. The contractor's initial notice must identify the nature and scope of the claim, including extra costs sought by the contractor. The contractor will subsequently be required to submit a detailed description and supporting evidence for the claim.
- c. PHA Acknowledgement. Immediately upon receipt of the contractor's notice, the PHA shall date stamp the notice and shall send a letter to the contractor acknowledging receipt of the claim. The PHA's letter also shall indicate that: if the claim was filed within the 10-day period, the contractor is required to submit a detailed justification for the claim; or if the claim was not filed within the 10-day period, the contractor's claim is not eligible for consideration.
- d. PHA Finding of Fact. The PHA shall review its records to ensure that the information provided by the contractor is accurate. Based on its review of the contractor's claim and its knowledge of the circumstances, the PHA shall prepare a "finding of fact" with the assistance of its architect and attorney and submit its recommendations for a determination by the Field Office.
- e. Field Office Approval. The Maintenance Engineer, in conjunction with the Regional or Chief Counsel, shall review the PHA "finding of fact" and proposed disposition of the claim. In making this review, consideration shall be given to the contractor's claim and the PHA recommendations in light of the obligations of both parties under the contract. Upon completion of the review, the Maintenance Engineer shall prepare a letter for the

signature of the Director, Housing Management Division, or designee (with the concurrence of Counsel), instructing the PHA to promptly:

- (1) notify the contractor of the PHA decision (as approved by the Field Office);
- (2) if applicable, request the PHA architect to prepare a change order to reflect any modifications to the contract as a result of the decision; and
- (3) notify the Field Office, if the Field Office decision is not acceptable to the PHA; or
- (4) notify the Field Office, if the contractor does not accept the decision. If court action is taken, the PHA shall submit a copy of the contractor's assertions to the Field Office.

Section 5. Construction Requirements

9-20. CONSTRUCTION PROGRESS SCHEDULE.

- a. Contractor Schedule. Where partial payments are necessary, the PHA shall require the contractor to prepare a construction progress schedule, for each project immediately after PHA issuance of the notice to proceed. The PHA may require use of Form HUD-5372, Construction Progress Schedule, or other appropriate form from various professional organizations. The information shall be realistic and consistent with the information provided by the contractor on the PHA-approved schedule of amounts for contract payments.
- b. PHA Review and Approval. The PHA or its architect shall review the contractor's construction progress schedule to determine that the scheduled dates and amount of work to be completed are reasonable and consistent with the contract. If acceptable, the PHA architect shall sign the schedule and forward it to the PHA for approval. Upon approval by the PHA, the approved construction progress schedule shall be returned to the contractor.
- c. Field Office Monitoring. The Maintenance Engineer shall periodically review PHA-approved construction progress schedules through on-site review of PHA files. If deficiencies are found, the Field Office monitoring letter (see paragraph 11-13a(3)) may require the PHA to forward copies of approved schedules to the Field Office.

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9-21. SCHEDULE OF AMOUNTS FOR CONTRACT PAYMENTS.

- a. Contractor Schedule. Where partial payments are necessary, the PHA shall require the contractor to prepare a schedule of amounts for contract payments immediately after execution of the contract. The PHA may use Form HUD-51000a, Schedule of Amounts for Contract Payments, or other appropriate form from various professional organizations.
- b. PHA Review and Approval. The PHA and its architect shall review the schedule to determine that the scheduled work to be completed by the specified dates and the amount of payment for such work are reasonable. If acceptable, the PHA shall approve and return the approved schedule to the contractor. Field Office review is not required.
- c. Field Office Monitoring. The Maintenance Engineer shall periodically review PHA-approved payment schedules through on-site review of PHA files. If deficiencies are found, the Field Office monitoring letter (see paragraph 11-13a(3)) may require the PHA to submit future payment schedules in all or specified instances to the Field Office for prior review and approval.

9-22. CONTRACT PAYMENTS. The PHA is responsible for making progress payments to the contractor based on the PHA-approved schedule of amounts for contract payments. Generally, progress payments for acceptable work and materials delivered and stored on the site are made at 30-day intervals. Field Office authorization of progress payments, based on the approved payment schedule, is not required.

- a. Contractor Request for Payment. The contractor shall submit a request for payment for each project on Form HUD-51001, Periodical Estimate for Partial Payment, or other appropriate form from various professional organizations. The request shall be accompanied by the contractor's written designation of a certifying officer. In addition, the contractor shall submit the following HUD forms or other appropriate forms, if applicable, with each periodical estimate for partial payment: Form HUD-51002, Schedule of Change Orders; Form HUD-51003, Schedule of Materials Stored; and Form HUD-51004, Summary of Materials Stored.
- b. PHA Review and Approval. The PHA shall review each contractor request and shall approve the advance if the following conditions have been met. If the contractor

requests payment for items which have not been acceptably completed, the PHA shall delete those items and adjust the payment accordingly.

- (1) the contractor request is consistent with the PHA-approved schedule of amounts for contract payments;
- (2) the request does not include the amount to be retained by the PHA under the contract;
- (3) the work covered by the payment has been performed in accordance with the construction documents;
- (4) the periodical estimate for partial payment has been properly executed and all applicable supporting documentation submitted; and
- (5) the contractor has submitted all required reports, e.g., payroll reports.

c. Distribution of Documents. The PHA shall retain the original periodical estimate for partial payment and any applicable supporting documentation for its file and return a copy of the PHA-approved forms to the contractor.

9-23. SHOP DRAWINGS AND MATERIALS. Where appropriate to the particular type of modernization being undertaken, the contractor shall prepare and submit shop drawings and material samples in accordance with the agreements reached at the construction conference.

- a. Contractor Submission. The contractor is responsible for preparing and submitting shop drawings to the PHA or its architect. The contractor's letter shall list the shop drawings being submitted and state whether the shop drawings deviate from the approved construction documents. Each shop drawing shall include: a descriptive title and drawing number; a brief description of the work involved; the project number and name; the contractor's and any subcontractor's name; and evidence of the contractor's approval.
- b. PHA Architect's Approval. The PHA architect shall review the shop drawings to determine whether they are consistent with the construction documents. The architect shall require that any corrections be made before approval. Upon approval, the architect shall:

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- (1) sign and date each shop drawing and include the following statement: "This shop drawing is approved, but the contractor shall verify and shall be responsible for all related documents and job conditions on the work."
  - (2) send a letter to the contractor indicating that the shop drawing was approved and advising the contractor that:
    - (a) "This approval of the enclosed shop drawing is general and does not relieve the contractor of the responsibility for adherence to the contract, nor is the contractor relieved of the responsibility for any error which may exist;" and
    - (b) if applicable, "The modification shown on the enclosed shop drawing is approved in the interest of the PHA to effect an improvement for the project and is ordered with the understanding that it does not involve any change in the contract price or time; it is subject to all contract stipulations and covenants; and it is without prejudice to any and all rights of the PHA under the contract and bond."
  - c. Distribution of Documents. The PHA architect shall retain a copy of the approved shop drawing and forward a copy to the contractor and the PHA.
  - d. Samples. The contractor shall submit certificates, material samples, and test results to the PHA architect for approval. The PHA architect shall advise the contractor of the reasons for any disapproval and request that another sample be submitted. Approved samples and data shall be retained both at the PHA office and the project office for comparison during construction.
- 9-24. LIQUIDATED DAMAGES. The contractor is responsible for completing the project within the time established in the construction contract unless time extensions are authorized in accordance with paragraph 9-18. If the work is not completed by the contract date, the contractor shall be liable for liquidated damages resulting from such unexcused delays.
- a. Finding of Fact. The PHA shall prepare a "finding of fact" under paragraph 9-18 and submit it to the Field