

**CITY AND COUNTY OF SAN FRANCISCO**

**MAYOR'S OFFICE OF HOUSING**

**CONTRACTING MANUAL  
2006 Amendment**

**FOR FEDERALLY FUNDED  
CONSTRUCTION PROJECTS  
FINANCED BY  
THE MAYOR'S OFFICE OF HOUSING**

2007 Amendment: This Contracting Manual is hereby amended to replace references to Chapter 14A with Chapter 14B of the San Francisco Administrative Code, as it now exists or as it may be amended in the future, establishing a Local Business Enterprise Program. The Disadvantaged Business Enterprise Program is applicable for projects Advertised or Solicited on or after July 26, 2004

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# INTRODUCTION

## THE PURPOSE OF THIS MANUAL

This *Contracting Manual* (“Manual”) is intended to provide recipients of Federal funds administered by the Mayor’s Office of Housing (MOH), and their agents (collectively “Sponsors”) with guidance regarding Sponsors’ responsibilities under Federal and Local laws and regulations regarding soliciting, awarding and administering contracts associated with projects assisted by Federal funds. It is intended to assist Sponsors to comply with the terms of the Loan Agreement executed by the City and County of San Francisco (“City”) and Sponsor. In the event of conflict between this Manual and an executed Agreement, the terms of the Agreement shall prevail.

This Manual applies to all multi-family projects financed by the Mayor’s Office of Housing (“MOH”) that are funded in whole or in part with Federal funds.<sup>1</sup> It applies to procurement and administration of professional services contracts, construction contracts and equipment or supplies contracts whether entered into directly by borrowers or grantees or by their architects or general contractors. It also applies whether or not MOH funds or Federal funds are used to pay any part of such contracts directly. As of the date that any Federal funds are committed to a project, this Manual applies to all contracts associated with the project and throughout the duration of the project.

This Manual is also intended to provide an overview of local regulations, procedures and standards related to procurement and contracting for the typical multifamily housing project financed with funds administered by MOH – whether financed with locally generated funds or with Federal funds. Local regulations and procedures are based on San Francisco Administrative Code Chapters 12B and 14B which prohibit discriminatory practices in the solicitation of contracts and promote affirmative efforts to provide opportunities for Local Business Enterprises (“LBEs”). Compliance with these regulations is monitored and enforced by the Human Rights Commission (“HRC”).

To accomplish these purposes, this Manual describes the procedures that must be followed in order to comply with both the Federal and local procurement and contracting

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<sup>1</sup> Please note that some provisions in this Manual may not apply to projects that benefit from federal funds provided directly by the U.S. Department of Housing and Urban Development (“HUD”) in addition to funds provided through MOH.

requirements and includes certain forms and contact information needed to successfully comply with these requirements.

The second half of this Manual is intended to facilitate collaboration between the City and its borrowers/grantees with respect to contract administration throughout the duration of a project. To accomplish this purpose, the Manual provides an overview of the overall pre-construction and construction process associated with the typical MOH-financed housing development project. In this context the Manual describes MOH's expectations with respect to communication between MOH and project Sponsors, including MOH approvals that may be required at various points and offers advice regarding "best practices" associated with contract administration throughout the project.

As a local housing finance agency MOH is responsible for promulgating these procurement and contracting requirements, monitoring compliance with them, and providing assistance to Sponsors. Nevertheless, Project Sponsors should review relevant law and regulations themselves since they are ultimately responsible for complying with applicable federal, state and local law, for incorporating these requirements into their contracts and for assisting their consultants, contractors or suppliers to comply with them. In the event of any conflict between this Manual and relevant federal, state or local law or regulation, said law or regulation shall apply.

These procurement requirements are based on the following federal regulations which can be accessed online at [www.HUD.gov](http://www.HUD.gov):

- 24 CFR Part 570: Community Development Block Grant Program
- 24 CFR Part 92: HOME Program
- 24 CFR Part 100: Fair Housing Act
- 24 CFR Part 84: Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations
- OMB Circular A-110: (guidance establishing procurement procedures)
- OMB Circular A-122: Cost Principles for Non-Profit Organizations
- 24 CFR Part 50 & 58: National Environmental Policy Act
- 24 CFR Part 135: Section 3, Housing and Urban Development Act of 1974
- 29 CFR Part 5: Davis Bacon Prevailing Wages
- 49 CFR Part 24: Uniform Relocation Assistance and Real Property And Acquisition for federal and federally assisted Programs
- 24 CFR Part 8: Section 504 of Rehabilitation Act of 1973 (accessibility)

## **REQUIREMENTS VS. RECOMMENDATIONS**

This Manual combines descriptions of federal and local procurement and contracting requirements with advice and recommendations based on “best practices” in the area of procurement and contract administration. Generally requirements (based on federal or local law, regulation or policy) can be identified by the use of the words “must” or “required to”. Procedures or activities that are strongly recommended but not required by law, regulation or policy are preceded by the words “may” or “should”.

## **PART I. PROCUREMENT REQUIREMENTS AND PROCESSES**

“Procurement” as used in this Manual refers to the process of selecting professional consultants, construction contractors, and equipment or material suppliers for the purpose of entering into a contract for services to be performed on behalf of a borrower/grantee.

### **A. GENERAL PROCUREMENT REQUIREMENTS**

In general, Federal and local regulations require the following for all procurement activities:

- Free and open competition to the maximum extent practical;
- Adoption of written standards governing the performance of employees engaged in the award and administration of contracts.
- Good faith efforts to use local businesses and contract with LBEs to the maximum extent feasible.
- Proper documentation of all procurement activities and decisions;

#### ***A1. Open and Free Competition***

To ensure free and open competition, Sponsors must consider the following:

- All solicitations (RFPs, RFQs, Bid packages, etc.) must clearly explain all the requirements that the bidder/respondent must fulfill in order for a bid/response to be evaluated by a Sponsor. All solicitations must also avoid situations or practices that are restrictive of competition, such as:
  - Placing unreasonable qualifying requirements on respondents;
  - Requiring unnecessary experience and/or excessive bonding;
  - Non-competitive pricing practices between affiliated entities;
  - Non-competitive awards to consultants already on retainer contracts.
- Awards must be made to the bidder/respondent whose response is both responsive to the solicitation and most advantageous to the Sponsor, considering price as well as other factors. Any and all responses may be rejected when it is in the Sponsor’s interest to do so. The Sponsor must ensure that awards are only made to entities capable of performing successfully. Consideration should be given to such matters as respondent’s integrity, compliance with public policy, record of past performance, and financial and technical resources.

- No awards may be given to entities that have been suspended or debarred or prohibited from contracting with any Governmental Agency. A list of firms debarred from participating in federally funded activities may be accessed on the GSA website at <http://www.arnet.gov/epl/>.

### **A2. Standards of Conduct and Conflict of Interest**

Federal regulations require that grantees and subgrantees using Federal funds maintain written standards of conduct governing conflicts of interest for their employees, officers, agents, and members of the board of directors. These regulations apply to employees, agents, consultants, officers or officials of the City, the Project Sponsor or any subrecipients of CDBG and HOME funds (as defined in 24 CFR Part 570.206 and 92.207) who exercise any functions or responsibilities with respect to the project or who are in a position to participate in a decision making process or gain inside information with regard to or benefit from the project. Such persons are not permitted to have an interest in any contract, subcontract or Loan or Grant Agreement with respect to the project during his or her tenure and for one year thereafter. This prohibition applies to both these persons and those with whom they have family or business ties. The architect, engineer and the Sponsor's employees, officers, agents, and members of the board of directors shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors.

### **A3. Good Faith Efforts to Engage LBE firms**

Both Federal and local regulations require that good faith efforts be made by Sponsors to utilize local business enterprises, suppliers and professionals.

To further this goal, Sponsors should engage the HRC prior to initiating any procurement activity. In general, HRC will assist in determining the appropriate good faith efforts that can be made by Sponsors to utilize local business enterprises, for any given procurement. In addition to providing such technical assistance and advice, HRC maintains a list of qualified local business enterprises in San Francisco which can be viewed on the HRC website at [www.sfgov.org/sfhumanrights](http://www.sfgov.org/sfhumanrights).

### **A4. Documentation**

It is critical that each action and decision of the Sponsor be fully documented at every stage of the development process. The Sponsor must ensure that written documentation is created and retained throughout the development period and for at least five years after project completion. Documentation must demonstrate the basis for each specific action and decisions; the steps followed in procuring

services for the project; any change to decisions previously made during the process; and any requests for waivers, exemptions or variations in the process.

## **B. THE FIRST STEP: THE NOTICE OF INTENT TO SOLICIT BIDS (NISB)**

Prior to initiating any procurement for a contract in excess of \$29,000, the Sponsor must submit a Notice of Intent to Solicit Bids (see Attachment A) to the City (addressed to MOH's HRC representative with copies to MOH's Construction Supervisor for procurement of construction related services and to MOH's Labor Standards Compliance Officer for actual construction services when prevailing wage requirements apply). The purpose of the NISB is to alert MOH and HRC to the need to:

- a) determine which approach to procurement is most appropriate among all allowable processes (RFQ, RFP, sealed bids, informal "small purchase" procedures, etc.);
- b) determine whether the HRC has available lists of qualified LBE entities who could provide the needed services<sup>2</sup> and if so to provide Sponsor with goals for LBE subconsulting participation;
- c) alert MOH's Labor Standards Compliance Officer to request appropriate wage determination information from HUD to be included in the a package for procuring construction contractors<sup>3</sup>; and
- d) plan the procurement process in a manner designed to comply with federal and local procurement standards and requirements.

A NISB must be submitted each time any procurement activity is proposed, whether for professional consultant services, for construction general contractors or subcontractors, or for materials or supplies.

## **C. PROCURING ARCHITECTS AND ENGINEERS ("A&E")**

To obtain A&E services, Sponsors may use a competitive proposal (RFP) process, whereby awards are made to the responsible firm most advantageous to the Sponsor's program with price and other factors considered. Alternatively Sponsors

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<sup>2</sup> Generally, HRC's database of LBE firms is limited to those typically involved in public works projects; specialized professional services that are unique to affordable housing development such as financial consultants and tax credit attorneys are generally not listed or monitored by HRC.

<sup>3</sup> Prevailing wages are required if the project includes the use of CDBG funds on 8 or more units or the use of HOME funds on 12 or more units.

may use a competitive qualifications-based (RFQ) process whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Whether by RFP or RFQ (or a combination of both), Sponsors must ensure that:

- RFP/Q documents clearly identify all evaluation factors and their relative importance;
- Responses are solicited from an adequate number of qualified sources (see following section on Other Consultants);
- Qualifications are reviewed and ranked by a panel or board with the technical expertise necessary;
- The entire procurement process is documented, including how RFP/Qs were publicized, how many responses were received, and how responses were evaluated and ranked.

In addition, RFP/Qs for A&E services must include efforts to solicit responses from qualified LBE firms and incorporate HRC subconsulting goals. To comply with this requirement, Sponsors must send a NISB to the HRC staff person assigned to MOH prior to commencing the process; submit a draft RFP/Q to HRC for its review and approval; and incorporate HRC's subconsultant goals into the RFP/Q. This is accomplished by using HRC ATTACHMENT 2, which lists LBE subconsulting participation goals for architects and engineers and requires contracts to adhere to SF Administrative Code Sections 12B and 14B.

For all RFP/Qs, Sponsor must send a Bid & Contract Opportunities form to the City's Office of Contract Administration (see [www.sfgov.org/oca](http://www.sfgov.org/oca)). This form is used to advertise (for free) on the City's website to encourage free and open competition.

In order to maintain fair and open competition for architectural services contracts, and to avoid creating an unfair advantage for any firm that may have participated directly or indirectly in formulating an RFP for such services, an architect who has performed a feasibility study (or its equivalent) for a housing development project financed or expected to be financed with federal funds granted to the project by MOH may not be selected for the full services contract to design that project. Nevertheless, if the Sponsor has received no responsive, qualified proposal(s) at a reasonable price after a minimum of two weeks of advertising for the feasibility work in a manner that clearly describes this prohibition, the Sponsor may request that MOH waive this restriction to allow procurement of feasibility services.

#### **D. PROCURING OTHER CONSULTANTS AND EQUIPMENT OR MATERIAL**

As with procurement of A&E services, Sponsors must procure other professional services consultants, such as owner's representative/construction managers,

attorneys, and financial or environmental consultants and purchase equipment and supplies for the project in a free, open and competitive manner to the maximum extent feasible. To the extent that HRC can identify LBE providers of such services or materials Sponsors must also make good faith efforts to solicit proposals from such firms. As with other procurement activities, Sponsors must also keep records of procurement of these services and materials demonstrating their compliance with these requirements.

Under Federal regulations, “small purchase procedures” which are relatively simple and informal procurement methods, may be used for securing services, supplies or other property that do not exceed more than \$100,000 in the aggregate.<sup>4</sup> If these procedures are used, it is nevertheless required that price or fee quotations be obtained from an “adequate number” of qualified sources. Prices or fees may be obtained by phone or supply catalogues or price lists may be used. However, the names, addresses and price or fee quotations of all contacted sources should be recorded.

Because the availability of suppliers and professional consultants varies greatly by field, MOH offers the following general guidelines for determining what could be considered an “adequate number” of qualified sources for such services or supplies for purposes of complying with Federal requirements.

In consultation with the City, Sponsor should first estimate the number of qualified entities available to provide the service or material/equipment needed.

If that number is less than 4, Sponsor may select one with whom to negotiate without obtaining price or fee quotations since for all practical purposes little or no competition exists for the desired service or material.

If that number is 4 or more, Sponsor must solicit price or fee quotations from at least 3 qualified entities.

## **E. PROCURING GENERAL CONTRACTORS**

In general, there are two acceptable ways to procure the services of construction contractors: the stipulated sum bidding process (often referred to as “competitive” or “hard bidding”) and the “negotiated bid” process. Whichever process is used, it must be fair, open to all qualified contractors, provide for competition to encourage optimum pricing, and include elements designed to maximize participation by LBE firms.

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<sup>4</sup> Note that the threshold for complying with local (HRC) procurement requirements for professional services contracts is \$29,000.

In a hard bid process, plans and specifications are distributed to prospective contractors who stipulate how much they will charge to perform the work described by those plans and the lowest qualified responsive bidder is selected. Because it maximizes competitive pricing and provides little opportunity for discrimination against LBE participation, a properly implemented hard bidding process should be used whenever feasible and practical. However, MOH/HRC will permit a “negotiated bid” process for the selection of general contractors when justified by a project’s complexity, schedule or design challenges. The hard bid process for selecting a general contractor is always permitted. Sponsors who wish to use the negotiated bid procurement process must secure MOH/HRC approval prior to initiating that process.

In a negotiated bid process, the general contractor is selected during the pre-construction period when the plans and specifications are still being developed. Typically the earlier the general contractor comes on board, the more value they can add to the project. The negotiated bid general contractor becomes a member of the “Project Team”, along with the Sponsor, Architect, and Owner’s Representative (if any). The intent is for the project to benefit from a builder’s expertise with plan review, cost estimating, value engineering, scheduling, and constructability in order to avoid problems that might otherwise arise.

One of the most important reasons to bring a general contractor on board during pre-construction is to allow for an informed discussion between a “designer” (the Architect) and a “builder” (the conditionally selected general contractor) regarding the “constructability” of the proposed design. For example, the general contractor may believe the Architect is proposing a design that unnecessarily increases construction costs, without a commensurate benefit to the Sponsor. In a negotiated bid process, the conditionally selected general contractor can propose alternatives that meet programmatic goals in a more cost effective manner. It is important for the Sponsor to strive to create a positive working environment among Project Team members that allows for constructive criticism. On competitively bid projects, another qualified member of the Project Team should play the role of “builder” that the conditionally selected general contractor plays in negotiated bid projects. This “builder” should be someone with substantial experience in the type of construction proposed for the project, including Sponsor’s staff, Owner’s Representative, or a contractor hired as a consultant for this purpose.

### ***E1. Procuring a General Contractor by Hard bid Process***

In the hard bid process, the general contractor is selected after the “Contract Documents” (plans, specifications or project manual and construction contract) are 100% complete. In this process, qualified general contractor’s compete primarily on the basis of price or fee.

Sponsors may elect to limit the pool of eligible general contractor bidders to those who meet minimum qualifications demonstrating that they have the experience and capacity to perform the work. Therefore, the hard bid process may be broken down into a two-stage process. First, the sponsor publicly advertises a Request for Qualifications (“RFQ”). Based on the responses to the RFQ, a number of qualified general contractors are “short listed”. The short listed general contractors receive a Request for Bids (“RFB”) that defines the procedure and format for submitting a bid.

### **E1(a). Request for Qualifications (“RFQ”)**

Sponsors often elect to use standardized forms for the general contractor’s qualifications, such as the American Institute of Architects (“AIA”) form A305 (“Contractor’s Qualification Statement” -- see attachment C).<sup>5</sup>

At a minimum, responses to an RFQ should demonstrate that the prospective general contractor has the necessary experience, staff, financial resources, licenses and bonding capacity to perform the work. The prospective general contractors should provide lists of all projects (regardless of type) completed within a certain time period, all current projects under construction and all future projects currently under contract. All projects should be described in terms of scope, contract amount, and duration. The general contractor should provide contact information for the Owner and Architect for each project listed. In addition, the qualifications must provide evidence of the prospective general contractor’s financial capacity to perform the work.

The Sponsor might want to request that prospective general contractors list the roles and professional experience/education for all important staff proposed to be dedicated to the project (Project Manager, Superintendent, Project Engineer, Foreman, Cost Estimator, etc). In addition, the Sponsor might want to request evidence of the prospective general contractors performance on past projects in terms of cost estimating, value engineering, neighborhood hiring, change orders, etc.

The RFQ must clearly define the time, place and format requirements with which prospective general contractors must comply. As with other procurement activities, the Sponsor must secure advance approval by HRC and MOH Construction Supervisor prior to issuing and advertising the RFQ in order to insure a fair, open and competitive process.

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<sup>5</sup> For a thorough review of the RFQ process, including model questions and a scoring system, see “Pre-Qualification of Contractors Seeking to Bid on Public Works Projects: The 1999 State Legislation and the Model Forms Created by the Department of Industrial Relations.” [www.dir.ca.gov/od\\_pub/prequal/PubWksPreQualModel.pdf](http://www.dir.ca.gov/od_pub/prequal/PubWksPreQualModel.pdf)

### **E1(b). Request for Bids (“RFB”)**

The RFB must also be pre-approved by MOH Construction Supervisor and HRC. Unlike RFPs, the RFB must contain all information necessary for a general contractor to bid and construct the project, including the appropriate prevailing wage determination provided MOH’s Labor Standards Compliance Officer. Any changes to the plans, specifications or construction contract after general contractor bids are received may result in costly change orders to the project. Therefore, it is critical that the Sponsor ensure that the Bid Documents are complete and accurate prior to distributing the RFB. In addition, the RFB must clearly define the time, place and format requirements with which interested bidders must comply.

### **E1(c). Bid Form**

The bid form is used by the bidder to state the name of firm, bid price, price of any alternates, name and title of individual completing the bid form, contractor’s license number, and firm contact information. The bid form should include a certification by the bidder that it has received and reviewed all applicable documents, including addenda (if any), that the bid is in conformance with the terms of the RFB, and that the bid will remain “open” for a specified time period (typically 30-90 days) during which time the Sponsor may accept the bid.

### **E1(d). List of Subcontractors**

The List of Subcontractors is an HRC form completed by each bidding contractor used to name the proposed subcontractors, subcontract bid amount, contact information, and LBE status. The Sponsor should contact HRC for the current form to be included in the RFB.

### **E1(e). Bid Alternates**

The Sponsor may elect to include one or more bid alternates in the RFB. Alternates can be additive (increase the Contract Sum) or deductive (decrease the Contract Sum). Alternates must be adequately described to allow bidders to bid and construct the alternate work. As with all portions of the RFB, alternates must be approved in advance by MOH construction supervisor. Sponsors are cautioned that multiple bid alternates can increase the difficulty of preparing bids, and therefore may discourage some bidders. Thus multiple bid alternates may have the unintended consequence of reducing competition and thereby increasing the Contract Sum.

### **E1(f). Bid Addenda**

In the event that the Sponsor needs to revise any portion of the RFB after it has been issued, the revisions should be included in a Bid Addendum that is distributed in writing, simultaneously, to all prospective bidders, and to any locations where bid documents have been made available. In addition, the Sponsor should publicly

advertise the existence of bid addenda via any media previously used to advertise the RFB.

As with all portions of the RFB, bid addenda must be pre-approved by MOH construction supervisor. Extensive bid addenda, or any bid addenda issued during the last half of the bid period, may trigger a MOH required extension to the bid period in order to insure a fair, open and competitive bid process. Therefore, Sponsors strongly urged to refrain from issuing an RFB with incomplete plans or specifications since such an action is likely to prolong the bid process, delay the project, and cause inflated bid prices.

One common reason for issuing bid addenda is to respond to a question by a potential bidder. Sponsors are cautioned against giving verbal responses to individual bidders. In order to insure a fair, open and competitive process, it is critical that the same information be given to all prospective bidders in the same format at the same time.

As with bid alternates, extensive or multiple bid addenda can substantially increase the difficulty of preparing a bid, and thereby discourage some bidders. Therefore, bid addenda should be avoided when possible, and judiciously used as necessary.

### **E1(g). Good Faith Efforts**

Sponsors are responsible for requiring general contractors to make good faith efforts to use LBEs for subcontracts in order to meet HRC LBE participation goals. In order to fulfill this responsibility, sponsors should encourage bidders to take the following actions:

- Attend any pre-bid meetings scheduled by the City to inform all bidders of the LBE program requirements for the project;
- Use HRC's list of certified LBE enterprises to solicit subcontractor bids;
- Negotiate in good faith with the LBE enterprises, and avoid unjustifiably rejecting proposals prepared by any LBE business enterprise;
- When applicable, advising and assisting interested LBE to meet insurance or bonding requirements.

In general, successful bidders will be those who have made efforts to obtain LBE participation to the degree that HRC could reasonably expect would produce a level of participation sufficient to meet the City's goals and requirements (see Appendix III).

### **E1(h). Federal Provisions for Affirmative Action and Equal Opportunity**

Federally assisted construction contracts of \$10,000 or more must adhere to Executive Order 11246, and the enabling federal regulations as enforced by the Department of Labor, which govern Affirmative Action and Equal Opportunity. These regulations require contractors and subcontractors on federally assisted construction projects to demonstrate good faith efforts to meet affirmative action goals for the employment of minorities and women and prohibit contractors from discrimination based on race, color, religion, sex, national origin, disability or covered veteran status. These provisions are expressly included in federally assisted construction contracts and subcontracts even if they are not physically incorporated in the contract document. (\*\*AA/EEO Provisions and Forms are included in this Manual in Appendix III, Attachment d, Federal Requirements).

### **E1(i). The Successful Bid: the Lowest, Qualified, Responsive Bid**

The goal of the hard bid process is to select the general contractor that submits the lowest, qualified, responsive bid.

LOWEST BID: The lowest bid may be relatively simple to identify when there are no alternates. However, when the Sponsor requests bid alternates, the lowest bid is the combination of the base bid and any alternates the Sponsor elects to accept. If the sponsor elects to accept a bid alternate that changes the order of the low bidders, the Sponsor is obligated to perform the alternate work (or accept the alternate deduction), and may not reverse the decision during contract negotiation or during construction without prior approval by MOH Construction Supervisor and HRC.

QUALIFIED BID: If the Sponsor has not used an RFQ process to pre-qualify bidders, the Sponsor must evaluate whether the low bidder is qualified to perform the work. If the Sponsor determines that the low bidder is unqualified to perform the work, the Sponsor must immediately notify MOH Construction Supervisor and HRC. In the event that MOH Construction Supervisor and HRC concur that the low bidder should be disqualified, the low bidder must be notified in writing with a chance to appeal before the Sponsor negotiates or contracts with another contractor. With prior approval by MOH Construction Supervisor and HRC, after a low bidder is disqualified, the Sponsor may evaluate the bid and qualifications of the next lowest bidder, or the Sponsor may elect to reject all bids and put the project out to bid again.

RESPONSIVE BID: The RFB defines the content, format and procedure for submitting a bid. Any bid that fails to comply with the requirements described in the RFB may be rejected as “non-responsive” to the RFB. For example, certain HRC forms are required to be completed and submitted with the bid, demonstrating the bidder’s compliance with local procurement requirements. Failure to include these forms may be grounds for finding the bid “non-responsive”.

The RFB may state that the Sponsor retains the right to waive irregularities in the bids received. However, to the extent that the Sponsor waives any irregularity on any bid, the Sponsor must waive all similar irregularities on all bids on a consistent basis without discriminatory intent or effect.

Some bidders may “qualify” their bids, or “exclude” certain items from their bids. If any qualification or exclusion causes a bid to materially differ from the terms established in the RFB, the bid may be rejected due to non-responsiveness to the RFB.

If the Sponsor determines that the low, qualified bid is non-responsive, the Sponsor must immediately notify MOH Construction Supervisor and HRC. In the event that MOH Construction Supervisor and HRC concur that the low, qualified bid should be disqualified due to nonresponsiveness, the low, qualified bidder must be notified in writing with a chance to appeal before the Sponsor negotiates or contracts with another contractor. With prior approval by MOH Construction Supervisor and HRC, after a low, qualified bidder is disqualified, the Sponsor may evaluate the responsiveness of the next lowest, qualified bidder, or the Sponsor may elect to reject all bids and put the project out to bid again.

### **E1(j). Bid Opening**

The opening of the bids is at a place and time described in the RFB. The bid opening may be open to the public, and the information on the bid form is typically public information. However, the Sponsor is not required to disseminate all information submitted by bidders, such as potentially confidential qualifications information.

## ***E2. Procuring a General contractor by Negotiated Bid Process***

The goal of the RFQ/P is to conditionally select a general contractor to provide pre-construction services during the design phase of the project and to manage the construction of the project after obtaining subcontractors’ bids for most of the work. In the negotiated bid process, general contractor’s compete on the bases of their qualifications to perform the needed pre-construction services and on their price or fee. Sponsors must request approval from MOH and HRC prior to beginning a negotiated bid procurement process. MOH is not likely to approve a request that does not guarantee that at least 75% of the contract price (excluding Contractor’s Fee, General Conditions and Other Foreseeable Costs as defined in Section **D2(e)**. below) is subject to hard bidding.

### **E2(a). Request for Proposals (“RFP”)**

The negotiated bid process uses a Request for Proposals (“RFP”) for the procurement of the general contractor. However, as with the hard bid process, the sponsor may elect to first “shortlist” qualified general contractors through an RFQ

process prior to issuing the RFP or these steps may be combined in the RFP process.

The RFP needs to be approved in advance by MOH Construction Supervisor and HRC, prior to advertising and distribution to potential general contractors. The RFP will need to generally describe the project, including the rationale for using the negotiated bid process, expressly defining the pre-construction services the conditionally selected general contractor will perform, and referencing specific regulations with which the project must comply (including certified payroll, HRC, accessibility, Section 3, insurance, toxics and &/or historic preservation, etc. – as appropriate). The RFP must clearly define the time, place and format requirements with which interested general contractors must comply, including the criteria used to evaluate the Proposals. RFP's typically seek information in two primary areas: Qualifications and Cost.

### **E2(b). Qualifications**

This aspect of the negotiated bid process is identical to the hard bid process.

### **E2(c.) Cost Competitiveness**

In order to insure that the general contractor can perform the work in a *cost competitive* fashion, the RFP should request that prospective general contractor's include with each proposal a proposed Fee, General Conditions, and Other Foreseeable Costs. These three items can be analyzed to determine the cost competitiveness of each proposal.

FEE: Sponsors typically seek to procure the services of a conditionally selected general contractor early in the preconstruction stage of the project. The Fee (or profit) of prospective general contractors Fee may be simply represented as a percentage of the overall hard construction costs at this early stage. The Sponsor should check with MOH PROJECT MANAGER for underwriting guidelines regarding general contractor fee.

GENERAL CONDITIONS: In addition to proposing a Fee, prospective general contractors must estimate the costs of General Conditions (or general requirements). General Conditions are typically the costs for field supervision, field office, temporary utilities, etc. Therefore General Conditions are time sensitive, and may be initially represented by the cost per time period (such as \$x per month). However, since not all general contractors calculate their General Conditions the same way, each Proposal should clearly define the items that are included in the General Conditions. In order to allow for an "apples to apples" comparison, the Owner may want to define the items that need to be included in the General Conditions.

**OTHER FORESEEABLE COSTS:** Finally, prospective general contractors should describe all other foreseeable costs that are not covered by Fee, General Conditions, or subcontracts (such as “general contractor contingency”, subcontractor bonds, etc.). The prospective general contractor’s Fee, General Conditions and Other Foreseeable Costs represent the total sum the prospective general contractor will charge for running the project.

#### **E2(d). Ranking**

In accordance with a process pre-approved by MOH Construction Supervisor and HRC for each project, the Sponsor reviews and ranks the proposals submitted by prospective general contractors. The Sponsor may elect to “shortlist” two or more qualified, prospective general contractors for a more in depth process, often including interviews before a panel. Again, the entire process, including establishing the criteria by which prospective general contractors will be evaluated, panel make-up, and interview questions will need to be pre-approved in advance by MOH Construction Supervisor and HRC to insure that the process is fair, open and competitive.

#### **E2(e). Memorandum of Understanding (“MOU”) for Pre-Construction Services**

Following approval by MOH Construction Supervisor and HRC, the Sponsor will typically conditionally select the highest ranking general contractor and enter into a Memorandum of Understanding (“MOU”) with it. The terms of the MOU should be pre-approved by MOH Construction Supervisor, describe the roles of the project team members during the pre-construction period and define the process and schedule for establishing the Sponsor’s budget for construction. Negotiations between the Sponsor and the conditionally selected general contractor are typically simplified if a draft of the MOU is included with the RFP.

The MOU may also define what payment, if any, the conditionally selected general contractor could be eligible for in the event they are terminated during the pre-construction period due to an inability to provide the needed pre-construction services or an unwillingness to provide a Guaranteed Maximum Price (“GMP”) for construction that conforms to the Sponsor’s budget. If the MOU allows for reimbursement of some pre-construction services, the conditionally selected general contractor must provide regular invoices during the preconstruction period accurately reflecting actual expenses (including staff hours and billing rates). The intent of any reimbursement under the MOU should be to partially defray a portion of the expenses a conditionally selected general contractor may have incurred during the pre-construction period, not to create a “profit engine” for an unsuccessful, conditionally selected general contractor. Therefore “best practices” call for the MOU to define a discounted reimbursement rate (with a fixed maximum cost) in the event the conditionally selected general contractor is terminated prior to the start of construction.

## **E2(f). Subcontractor Bidding**

In a negotiated bid process, subcontractors (“subs”) typically provide bids directly to the conditionally selected general contractor toward the end of preconstruction period. In order to insure a fair and open process, the Sponsor and the conditionally selected general contractor will need to work closely with HRC prior to soliciting subcontractor bids in order to define the appropriate process, including Good Faith Efforts and establishing goals for LBE subcontractor participation.

The project team, including the Sponsor, should work proactively and diligently to encourage qualified subcontractors to bid the project, including local business enterprise subcontractors. The Sponsor’s outreach efforts help to insure that the subcontractor costs, which typically make up the vast majority of the Contract Sum, are competitive and reasonable. In order to insure a fair and competitive process, all questions from individual bidders should be responded to in writing addressed to all bidders.

Even though the Sponsor works closely and cooperatively with the conditionally selected general contractor during pre-construction of a negotiated bid project, the subcontractors typically competitively bid the project. Therefore, the Sponsor needs to insure that the Bid Documents are complete and integrated prior to subcontractor bidding in order to minimize costly change orders during construction. In addition, the Sponsor should seek to avoid unnecessary bid alternates and addenda in order to encourage bidding by the greatest number of qualified subcontractors.

On rehab projects it is common to hold one or more “bid walk-throughs” to help bidders better understand the project. Sponsors are urged to allow for adequate time for the plans to be reviewed prior to the walkthrough. “Best practices” call for Sponsors to provide adequate lighting and remove any unnecessary storage and debris in order to improve bidders’ ability to inspect the site. Similarly, areas of exploratory demolition should be clearly identified and visible during the walk through. Finally, the walk through should be conducted in a manner to avoid unnecessarily disturbing residents.

## **PART II. OVERVIEW OF MOH CONSTRUCTION PROCESS**

This overview divides the process of constructing (or rehabilitating) MOH-funded affordable housing into two phases: (A) Preconstruction, the period of design, budgeting, permitting and drafting of construction documents; and (B) Construction itself.

Throughout both of these phases, there are certain responsibilities Sponsors must concern themselves with in order to comply with the terms of their financing agreement with MOH, and other tasks or duties that are strongly recommended in order to navigate through these phases with a minimum of delay or unnecessary additional cost to the project. The most important of these concern on-going communication with MOH staff.

### ***Schedule for Design and Construction***

The Sponsor is responsible for creating and maintaining a Project Schedule for design and construction and for meeting the milestones and deadlines established in the Project Schedule. In the event the Sponsor is unable to meet a deadline, the MOH Project Manager should be notified as soon as practicable by FAX or email with a detailed description of why the deadline or milestone cannot be met and a revised Project Schedule. In addition, a summary of the cause and effect of the schedule slippage should be included in the following Monthly Project Update. Finally, the Sponsor must provide the MOH Project Manager with a revised Project Schedule.

### ***Monthly Project Updates***

In order to keep the MOH Project Manager informed and to maximize opportunities for MOH assistance to the project, a Sponsor must submit a monthly project update, with copies to MOH, MOH's Housing Development Director, MOH's Construction Supervisor and the HRC representative by the first of each month. This requirement typically begins when a loan or grant is approved and continues until the project is closed out, though MOH Project Manager may elect to waive it for each month during construction when there are regular job site meetings and monthly Draw Meetings. The form for Monthly Project Updates is attached as Attachment B.

### ***Other Reporting Requirements***

In addition, a Sponsor must notify MOH Project Manager anytime there is a proposed change in scope, cost or schedule. To ensure maximum interagency collaboration, MOH Construction Supervisor must be copied on all correspondence and minutes with other City Departments (Planning, DBI, DPW, MOD, SFFD, etc.) and utilities (PG&E, SFWD, etc.), including permit applications, plan check comments, responses, correction notices, etc. To facilitate the evaluation and

approval of funding requests, MOH Construction Supervisor must be provided copies of all construction cost estimates (as well as the plans and specifications used for those estimates), all correspondence or minutes from value engineering (including value engineering suggestions not incorporated into the project), and bidding and contract documents (including those used for subcontractor bidding). To facilitate evaluation and approval of disbursements and change orders, Sponsors should send MOH Construction Supervisor copies of any correspondence from any party (including neighbors, contractors, public agencies, unions, etc.) pertaining to potential changes, claims or delay.

## **A. PRECONSTRUCTION**

The preconstruction phase includes four key elements related to preparing for construction: (1) Design; (2) Budgeting; (3) Permits and Approvals; and (4) preparing Contract Documents.

### ***A(1). Design***

The design process can be broken down into 4 basic phases: (a) Program, (b) Schematics, (c) Design Development (“DD”), and (d) Construction Drawings (“CD”). Each subsequent phase builds upon decisions made in earlier design phases. The product of each phase must be reviewed and approved by MOH before the next phase begins. Note that MOH’s approval of a design is always contingent upon the estimated cost. If costs subsequently increase, the Sponsor may need to revisit previous design decisions in order to stay within budget.

In the negotiated bid process, the general contractor is involved virtually throughout the design process, providing cost estimating/value engineering advice and reviewing the “constructability” of the design. In a hard bid process, Sponsor must find another way to accomplish these essential tasks, either with on-staff expertise or with the assistance of consultants.

In all cases the design team should engage property and asset management staff throughout the design process.

### **A1(a) Program**

The program represents the Sponsor’s goals for the project. A program typically describes the types of housing, units, and construction, and any special goals or features such as community-serving spaces, family child-care or special parking for car-sharing.

### **A1(b) Schematics**

Schematics are an early drawing of the shell of a building that begins to incorporate the programmatic goals of the project with respect to a particular site

and a preliminary building design. Schematics include a basic site plan with a footprint of the building, unit count, simple floor plans, and exterior elevations. Schematics need to show the basic square footage of the building, primary uses, as well as a path of travel through the building (including preliminary fire exiting).

### **A1(c) Design Development (“DD”)**

Design Development (“DD”) drawings show all areas of the building, including interior partition walls. DD drawings should include the following:

- the total square footage for the entire building, including a breakdown of square footages devoted to different uses (common areas, commercial, staff/services, courtyard, maintenance/utility, parking, etc.);
- a breakdown of units by type (accessible, adaptable, studio, one bedroom, etc.), including square footage for each type of unit;
- proposed building systems (including HVAC, recycling, etc.) that require significant floor area to be functional;
- preliminary specifications for the project.

DD is an appropriate time to engage in Value Engineering and Cost Estimating – see **A(2). Budgeting**, below, to arrange a Pre-Application Meeting with the Department of Building Inspection (“DBI”) – see **A(4). Permitting**, and to obtain an initial Plan Review with the Mayor’s Office on Disability (“MOD”).

On projects involving the rehabilitation of an existing building (“rehab”), DD is also the appropriate time for exploratory demolition and systems testing to evaluate design assumptions and avoid unforeseen conditions that can lead to costly change orders during construction – see **A(5). Other Preconstruction Considerations**.

If the building to be rehabbed is eligible for inclusion in the National Register of Historic Places (it does not have to be an official or designated landmark), the Sponsor should obtain a copy of the Secretary of the Interior’s Standards (SOIS) for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

### **A1(d) Construction Drawings (“CDS”)**

Construction Drawings (“CDs”) are the completed plans and specifications used for final cost estimating, permitting, bidding and construction. CDs must include complete engineering drawings and calculations. It is one of the Sponsor’s most critical responsibilities to insure that CDs are complete, accurate and ready for bidding. Any errors or omissions in CDs may result in costly change orders and delay.

Sometimes a Sponsor may elect to create one or more “sub-sets” of CDs. These sub-sets may include: Permit Set, Bid Set, Contract Set, and Construction Set. MOH Construction Supervisor should be notified in advance if the Sponsor intends to use sub-sets of CDs and copies of each sub-set must be provided to MOH Construction Supervisor.

“PERMIT SET”: A Sponsor may elect to submit plans to the Department of Building Inspection (“DBI”) prior to 100% completion of CDs in order expedite the permitting process because some finish details necessary for construction are not required for DBI to issue a building permit.

“BID SET”: Sponsors sometimes elect to solicit bids using a set of plans that they know will need to be modified prior to (or sometimes even after) the start of construction. Typically this is done because the project was not able to adhere to the preconstruction schedule, and therefore the Sponsor attempts to accelerate bidding and the start of construction in order to make up for time lost during preconstruction. Sponsors are strongly advised to adhere to a preconstruction schedule and avoid using separate “Bid Sets” because changes to plans and specifications after bidding will likely be priced at a premium “change order” rate and can result in delay (which in turn can trigger expensive change orders compensating the general contractor for “extended general conditions”).

“CONTRACT SET”: The Contract Set of plans may differ from the Bid Set if the Sponsor modifies the plans between bidding and the time the parties execute the Construction Contract. Again, any changes after bidding come at a premium “change order” rate due to the lack of a competitive process to control costs after bidding is complete. Therefore, whenever possible, the Contract Set should directly correspond to the Bid Set.

“CONSTRUCTION SET”: The Construction Set of plans may differ from the Contract Set if the Sponsor modifies the plans between the execution of the Contract and the issuance of the Notice to Proceed (“NTP”). For the reasons noted above, this should be avoided whenever possible.

“AS BUILT SET”: Although not actually a “pre-construction” issue, the Sponsor must insure that the general contractor maintains and regularly updates an As-Built Set (“as-builts”) of drawings that accurately reflect any deviations from CDs. Therefore the Sponsor should regularly review the as-builts during construction, preferably at least monthly, to insure that all necessary information is being properly recorded by the general contractor on a timely basis. The Sponsor must maintain a complete and accurate set of as-builts for the duration of the Loan Agreement.

## ***A(2). Budgeting***

Until all hard bids are received the construction budgeting process can be considered to include two interactive elements: (a) Cost Estimating and (b) Value Engineering.

### **A2(a) Cost Estimating**

Sponsors should cost estimate each phase of the design to insure that the project is staying within the approved budget. The cost estimate should be performed by qualified staff of the Sponsor, Architect, general contractor, or an independent third party consultant. To the extent feasible, cost estimates should allow for line item comparison to previous cost estimates, subcontractor bids and the final schedule of values.

### **A2(b) Value Engineering**

Value Engineering is the process used by the project team to analyze elements of the design in order to develop more cost effective solutions to achieve programmatic goals. The definition of "cost effective" should include both initial hard construction costs and overall "life cycle costs" (operating/energy/maintenance costs + useful life/replacement costs).

The project team should perform value engineering throughout the preconstruction period. All value engineering efforts should be documented and communicated to MOH Construction Supervisor, including measures that are rejected. Documentation allows the Sponsor to more quickly make important decisions in the event the project has additional funds for "upgrades", or if a funding shortfall arises due to unforeseen conditions.

It is important to remember that the vast majority of hard construction costs are associated with work not directly performed by the general contractor, or even directly designed by the Architect. To the extent feasible, the project team should seek value engineering input from professionals (including subcontractors and engineers) involved in the major trades, including structural, fire, mechanical, and electrical. In addition, the project team must coordinate the plans to avoid conflicts in the CDs.

## ***A(3). Permits and Approvals***

### **A3(a) National Environmental Policy Act (NEPA) and Historic Preservation - Section 106 Reviews**

Compliance with the environmental review laws and regulations contained in the National Environmental Policy Act (NEPA) and set forth at 24 CFR Part 58 of the Code of Federal Regulations, is the legal responsibility of all CDBG and HOME

recipients and applicable to all CDBG and HOME funded activities. Each contract is conditioned upon the completion of the environmental review before the obligation and expenditure or draw down of funds for these projects. The environmental reviews and applicable public notifications become part of the written environmental review record that is to be maintained by the MOH. The required documentation is to serve as proof that the CDBG and HOME funded activities are in compliance with the NEPA and other applicable federal laws, regulations and executive orders.

Sponsors should contract directly with a consultant to perform the required environmental reviews. MOH project managers are to complete the Request of Environmental Review/ Historic Preservation Clearance of Federally Funded Projects (see Appendix III, Attachment e) for each project undertaking and submit to the consultant. Once the consultant has completed the environmental review and the project undertaking has been cleared as required, Project managers in conjunction with the consultant are to ensure that Sponsors have met the requirements as set forth under NEPA, Section 106 of 36 CFR Part 800-Historic Preservation and the California Environmental Quality Act (CEQA).

### **A3(b) Planning Department (“DCP”)**

Sponsors should review the plans and building history with the architect to determine whether a City Planning Commission Conditional Use, Zoning Variance, Certificate of Appropriateness (for landmarks), or Environmental Review application is required. A review of all previous building permits will indicate whether the current or proposed use of the facility is permitted under current zoning.

If an application for Environmental Review, Conditional Use or Zoning Variance is required, the Project Sponsor should file it promptly to minimize delays during the building permit approval process. The Department of City Planning (“DCP”) should be contacted for specific requirements. If clearance under the California Environmental Quality Act (CEQA) is necessary, DCP coordinates an Environmental Review for the Project. Sponsors may need to hire consultants to perform specialized studies in order to complete an Environmental Review.

MOH advises that Sponsors request elimination or reduction of Planning Fees under City Planning Code Section 351(e), 360(g) and 361(c).

If an existing building is 50 years old or older and is assessed as having architectural significance (factors which include architectural significance, urban design context and overall environmental significance), there is the possibility that a Certificate of Appropriateness application must be filed with DCP. Exterior alterations to a landmark that requires a building permit and would be visible from a public street must have a Certificate of Appropriateness from the Landmarks Preservation Advisory Board (“Board”).

In a Historic District, any exterior alterations need a Certificate of Appropriateness regardless of the age of the building. The review process has two steps: (1) review by the Architectural Review Committee of the Board, and (2) review by the full Board. The Committee makes a recommendation for approval, disapproval or modification to the full Board. The Certificate of Appropriateness is authorized by the Planning Director, or, in major cases, by the Planning Commission. Appeal from the Landmark Preservation Advisory Board decision is made to the Planning Commission within 30 days of the date of the Landmark Preservation Advisory Board. The application process for the Certificate of Appropriateness is separate from the building permit process and should be started after the design of exterior renovation is completed.

### **A3(c) Department of Building Inspection (“DBI”): Building Permit**

Virtually all work funded by MOH requires a building permit issued by the Department of Building Inspection (“DBI”). In addition, there may be additional permits required by DBI, the Fire Department (“SFFD”), the Department of Public Works (“DPW”) and the Water Department (“SFWD”) for electrical, plumbing, fire sprinkler, re-roofing, exterior re-painting, or any work impacting the sidewalk or street (even temporarily). There also may be separate permits required for work impacting presumed toxic materials including: lead, asbestos, and underground storage tanks. MOH Construction Supervisor should be provided copies of all permit applications, correspondence, minutes, plan check comments & responses, permits issued, and correction notices/notices of violation.

The Sponsor is cautioned that the issuance of a building permit does not guarantee that the design is actually in conformance with applicable codes. Rather, the permit merely indicates that the plans have been reviewed for compliance with codes. If a plan checker inadvertently “misses” a code violation, the Sponsor may not rely on that error. Rather, the Sponsor has an ongoing responsibility to remedy code deficiencies, even those discovered after the issuance of the permit. For example, the DBI field inspector may legitimately reject work even though it is in compliance with the approved plans if that work is not in compliance with the Code.

Existing improvements constructed under an approved permit and in conformance with the codes in effect at the time the permit was issued will typically be “grand fathered” and will not need to be upgraded simply because codes subsequently are revised. There are certain exceptions to this rule, typically involving issues of critical life safety, such as the seismic retrofit of unreinforced masonry buildings, and the installation of fire sprinklers in residential hotels. In addition, new work under a permit may trigger code required upgrades to affected building systems and areas of remodel..

The Sponsor is cautioned that there is no “grand fathering” for any work performed without a permit, even if that work was performed prior to the Sponsor’s acquisition of the building. In fact, there may be substantial penalties if DBI discovers that work has been performed without a permit. Therefore it is important for the Sponsor to retain complete and accurate records of all permits (including signed off job cards) to demonstrate that all work has been performed pursuant to approved permits and in accordance with applicable codes in place at the time.

Some designers and Sponsors harbor the misconception that it is beneficial to submit incomplete plans in order to “get into the queue” at DBI. Under this flawed theory, there is adequate time to correct deficiencies during the plan check process. However, there is no “timetable” for approving plans that are not in conformance with the Code. Each time a plan checker must issue plan check comments (i.e., note errors or omissions in the plans), the permit approval process is delayed. There can be substantial delay between the time when the Sponsor responds to plan check comments and the time when the plan checker begins re-checking the plans again. Therefore, in order to expedite the permit approval process, the Sponsor should submit complete plans, closely monitor the approval process, respond to any plan check comments as soon as possible, and notify MOH Construction Supervisor if there are any delays.

If the plan check process must begin before the entire set of Construction Drawings is complete, the Sponsor may request an “Addendum Schedule” from DBI allowing the early portion of the work (for example: foundation, structural and framing) to be plan checked before the remainder of the plans are reviewed. An Addendum Schedule allows the design team to continue developing latter portions of the design while the initial part of the design is being plan checked by DBI. The Addendum Schedule must be pre-approved by MOH Construction Supervisor and is at the discretion of DBI. The Sponsor should allow adequate time for DBI to review and approve the request to use the Addendum Schedule process. As with all documents submitted to DBI, plans submitted under an Addendum Schedule must be fully Code compliant and ready for plan check.

### **A3(d) Building Permit Fees**

Some Sponsors seek to have their building permit application fees deferred until the time the permit is issued. Sponsors interested in seeking permit application fee deferrals from DBI should notify MOH Project Manager, preferably a month before applying for the building permit. While MOH can assist Sponsors with a building permit application fee deferment, ultimately the authority to grant or deny the request lies solely with DBI.

### **A3(e) School District Fees**

Sponsors are advised that the San Francisco Unified School District (“SFUSD”) imposes a fee based on square footage of added commercial and residential space. This fee is in addition to the regular DBI plan check and permit fees. Contact SFUSD Administrative Offices for more information at 241-6090.

### **A3(f) Pre-Application Meeting**

Prior to submitting for a building permit, it is often helpful to schedule a “Pre-Permit Application Meeting” with DBI and SFFD. These meetings need to be scheduled at least two weeks in advance, typically take about an hour and currently cost about \$200. Prior to the meeting, the Sponsor submits a series of written Code questions to be addressed at the meeting. Plan checkers and field inspectors are required to comply with written code interpretations from pre-permit application meetings. If DBI and SFFD request that the Sponsor provide the minutes from the meeting, it is critical that the minutes be distributed within a week of the meeting, and that the Sponsor follow-up to insure that the minutes are signed by DBI and SFFD. Delay in submitting the minutes to DBI, or following up to secure signatures, can result in the minutes being void. MOH should be copied on all minutes from these meetings.

### **A3(g) Mayor’s Office on Disability (“MOD”) Review**

The Mayor’s Office on Disability (“MOD”) is the City office charged with reviewing plans and inspecting construction for conformance with Federal and local accessibility regulations and guidelines for City funded projects, including the multi-family affordable housing MOH supports. Although MOD does not have authority to create new accessibility requirements, they may exercise reasonable discretion when interpreting existing regulations. In addition, MOD provides technical support, educates the affordable housing community regarding “state of the art” technologies (such as “Talking Signs”) and recommends cost effective accessibility upgrades that are not otherwise required, but improve accessibility for persons with disabilities. Therefore the Sponsor is cautioned to clarify whether MOD is “requiring,” or merely “requesting,” a particular amenity.

Prior to submitting for a building permit, multi-family projects receiving MOH funds should undergo a plan check performed by MOD. The Sponsor should contact MOD directly for applicable forms and procedures. For fully compliant plans, the MOD review process should be completed in one month or less. The Sponsor is advised that any modifications to plans following MOD review (including addenda) that could reasonably be interpreted as modifying accessibility for persons with disabilities should be submitted to MOD for subsequent review. In addition, Sponsors are urged to contact MOD early in the design process (Schematics or DDs) for a voluntary preliminary review. At early design stages it may be possible to incorporate MOD requirements and recommendations with little or no cost to the

project. Finally, the Sponsor should also contact MOD to schedule field inspections prior to covering rough framing with finish wall surfaces (prior to “sheetrock”), and again at 100% completion of construction, prior to occupancy.

Sometimes it may be necessary for the Sponsor to propose narrative “programmatically” solutions to MOD that describe reasonable accommodations the Sponsor will provide as necessary (such as installing grab bars in bathrooms, or providing staff to assist with refuse disposal for any tenant unable to operate a trash chute door). Upon approval by MOD, the narrative programmatic solutions should be distributed to all tenants. Finally, MOD typically reviews “rent-up” procedures to insure that proposed procedures do not have the effect of discriminating against persons with disabilities.

In the event of a dispute between the Sponsor and MOD, MOH is available to mediate upon request of either party. In addition, if the Sponsor and MOD are unable to reach an agreement regarding code and regulatory requirements, MOH can assist with the appeal process. The Sponsor should contact MOH Construction Supervisor in the event assistance is needed with mediation or appeal of an MOD decision. (For information more contact the MOD on 554-6789)

#### ***A(4). Contract Documents***

The Contract Documents define the scope of the construction work and the responsibilities of the Sponsor and general contractor. Contract Documents typically include the (a) PLANS, (b) PROJECT MANUAL and (c) CONSTRUCTION CONTRACT. Contract Documents may not contain features that unduly restrict competition, such as unnecessarily restrictive “source” requirements for equipment or materials.

On negotiated bid projects, the Contract Documents are jointly developed by the project team after the procurement of the general contractor, although the Architect and Engineers retain responsibility for any errors or omissions. For hard bid projects, the Contract Documents need to be included as part of the bid package at the time the RFB is issued.

MOH must approve all Contract Documents.

#### **A4(a) Plans**

The Contract Set of plans form part of the Contract Documents. The Contract Set must be adequately identified in the Construction Contract so that there is no doubt during construction which set of plans the general contractor is obligated to build. The Contract Set of plans must be in conformance with the plans reviewed by MOD and approved by DBI.

## **A4(b) Project Manual**

The project manual typically has two parts: “Funder Requirements” and “Technical Specifications.”

**FUNDER REQUIREMENTS:** The Funder Requirements are typically defined in the Loan or Grant Agreement, including Federal requirements triggered by the use of Federal funds. Some Funder Requirements apply to the general contractor and are typically included in the Construction Contract. The most important of these include the following:

**HUD Section 3 and MOH Section 3 Plus Programs --** Section 3 of the Housing and Urban Development Act of 1968 applies to construction contracts of \$200,000 and greater. The Act requires documentation of actions undertaken by the City to meet the requirements of 24 CFR 570.506(g)(5), relating to the hiring and training of low and moderate income persons and the use of local businesses within the project area. The MOH Housing Compliance Manager will assist the contractor and subcontractors in meeting their obligations under Section 3. (see contact information, Appendix III)

The Contractors must assure that lower income project area residents have the maximum opportunity for employment and training on this project; and that small businesses located in the project area, or owned in substantial part by or which employ lower income persons/residents in the project area, will be utilized to the fullest extent possible as recipients of contracts. Accordingly, contractor and subcontractors will be required to make their best efforts to hire and train low and moderate income persons living in San Francisco, and to use the services and supplies of San Francisco businesses, or businesses that are owned by persons living in San Francisco. Specific instructions for complying with Section 3 are located in Appendix III, Attachment f.

Contractor and subcontractors bidding on the project must not fill positions that are vacant at the time of the submission of the bid that might otherwise be filled by San Francisco low moderate income residents prior to the project's preconstruction conference. The filling of these positions will be discussed at the City's preconstruction conference. The City will provide assistance to the contractor or subcontractor to identify San Francisco residents to fill the positions and to provide training.

Contractor and on-site construction subcontractors will be required to attend the preconstruction conference and at that time will be asked to certify their understanding of and intention to comply with these requirements. Compliance with these requirements will be monitored jointly by MOH and the HRC.

The Section 3 business contracting goal is at least 10% of total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction, and at least 3% of the total dollar amount of all other Section 3 covered contracts.

Contractors will be required to attend a preconstruction conference and to certify their intention to comply with these requirements as indicated on the "Section 3 Assurance" attached as Attachment g and the "Section 3 Action Plan" attached in Appendix III, Attachment h)

**Lead Hazard Abatement** -- The Sponsor is responsible for insuring that all rehabilitation is designed, constructed and maintained in accordance with the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing ("Guidelines"), issued by HUD and updated from time to time.<sup>6</sup> In addition, there may be additional lead regulations by other agencies including: Environmental Protection Agency ("EPA"), Bay Area Air Quality Management District ("BAAQMD"), and Occupational Safety and Health Administration ("OSHA" for Federal requirements and "CalOSHA" for additional State requirements). The Sponsor should contact MOH Construction Supervisor for further information.

Most of the housing stock in San Francisco was originally constructed prior to 1979, when paint containing lead could be used in residential buildings. Therefore lead is presumed to be present in much of the existing housing in San Francisco, including much of the multi-family housing supported by MOH . In addition, lead is often present in the soil in San Francisco. Therefore, lead is frequently a concern for the Sponsors of multi-family rehab and new construction projects.

The greatest risk in a residential development for exposure to leaded dust typically comes from the rehabilitation or painting of buildings originally constructed prior to 1979. Although HUD typically exempts housing legally restricted to seniors, and "zero bedroom units" (single room occupancy hotel and studio units) from most lead regulations, MOH elects to apply the Guidelines to almost all multifamily housing because children are often present in units designed for single adults or seniors.

In addition, all exterior re-painting, regardless of funding source, needs to be performed in conformance with Chapter 36 of the San Francisco Building Code, which basically tracks the language of the Guidelines, with some specific notice requirements. Finally, effective January 1, 2003, any building, regardless of funding source, may be in violation of California Health and Safety Code section

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<sup>6</sup> Copies of the Guidelines are available for a fee from HUD USER at 1-800-245-2691.

17920.10 if there is deteriorated lead-based paint, lead-contaminated soil or dust, or if lead-based paint is disturbed without containment.<sup>7</sup>

New construction projects typically need to test the soil for total lead, and for soluble lead. The test results are used to determine whether the soil is hazardous if it is undisturbed, and whether it would be considered hazardous if it was excavated and transported offsite. The Sponsor is cautioned to insure that this analysis is performed under both Federal and State of California standards. If leaded soil will be transported offsite, the Sponsor should budget for all applicable disposal fees, including the Hazardous Waste Generator Fee levied by the State Board of Equalization pursuant to Health and Safety Code section 25205.5.

The Sponsor needs staff or consultants with adequate awareness, expertise and certification to identify possible lead hazards, approve a compliant lead work plan, and maintain the project after the completion of construction in a lead safe fashion. The Sponsor is required to maintain files documenting all tenant, neighbor and contractor notifications; lead inspections and assessments; testing and monitoring; worksite preparation; worker protection; waste handling; interim controls and abatement; cleaning and clearance; and ongoing operations and maintenance procedures. Contractors or workers performing “trigger tasks” on materials known, or presumed, to contain lead (as defined in the Guidelines) may need appropriate certification.

**Non-Discrimination** – The Sponsor, contractor and all subcontractors must not discriminate on the basis of the fact or perception of a person’s race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune deficiency Syndrome or HIV status (AIDS/HIV status).

**Supplementary Conditions- Insurance and Bonding** – The insurance requirements for each project are specified in the funding agreement. Generally, the Sponsor must maintain or cause its contractors and subcontractors to maintain the following insurance coverages:

- a) Workers' compensation insurance.
- b) Commercial general liability insurance of:
  - (1) not less than \$1,000,000 each occurrence before the start of demolition/construction/rehabilitation, if the Site is unoccupied;
  - (2) not less than \$10,000,000 (in the case of new construction), or less for projects costing less than \$5,000,000 if approved by MOH, each occurrence at all times during demolition/construction/rehabilitation and occupancy of the Site and on-going operations of the Project.

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<sup>7</sup> Senate Bill SB460 (Ortiz) signed into law by Governor Davis September, 2002.

- c) Business automobile liability insurance.
- d) During the course of any rehabilitation/construction, builders' risk insurance for one hundred percent (100%) of the replacement value of all completed .
- e) Property insurance for one hundred percent (100%) of the replacement value of all furnishings, fixtures, equipment, improvements, alterations and property on the Site.;
- f) Boiler and machinery insurance.
- g) During construction and/or rehabilitation, performance and payment bonds of contractors each in the amount of one hundred percent (100%) of contract amounts.

Sponsor must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

**Federal Labor Standards Provisions** – Virtually all MOH supported multi-family projects (CDBG: 8 or more units, HOME: 12 or more) are required to comply with Davis-Bacon prevailing wage and certified payroll regulations.

The Sponsor should contact the MOH Labor Standards Compliance Officer approximately one month prior to bidding, for the appropriate Federal Wage Determination for bidding purposes. An accurate determination of the applicable wage determination may depend on a number of factors, including the source of funds (HOME, CDBG, etc.), the number of units, the number of floors of the proposed building, and the form of general contractor procurement (hard bid or negotiated bid). Since the Federal Wage Determination is irregularly updated, the Sponsor should again contact the MOH Labor Standards Compliance Officer prior to execution of the Construction Contract to insure that the appropriate Federal Wage Determination is physically incorporated into the Contract Documents. In addition, Sponsors are advised to contact MOH Project Manager to determine the applicability of state or local prevailing wage requirements for any project.

**Federal Affirmative Action and Equal Opportunity** – The Sponsor must ensure that Attachment D, describing Federal requirements relating to Affirmative Action and Equal Opportunity, is incorporated into the Funder Requirements described in the Project Manual.

**TECHNICAL SPECIFICATIONS:** The Specifications (“specs”) are a narrative document typically prepared by the Architect and Engineers. Generally speaking, specs must clearly define the required properties of equipment, materials, fixtures and finishes that are to be incorporated into the project, and may not unduly restrict competition. For example, while the plans may show where a material will be used, such as a floor covering, the specs will define the quality of material to be used, as well as any special installation procedures that must be followed. However, the specs typically may not

require that a certain brand of material be used, because that would unnecessarily restrict competition. Instead, the specs may establish reasonable performance criteria that the material must meet in order to be used on the project. Thus, the specs are equally as important as the plans, and need therefore need to be approved by MOH.

“Best practices” call for the Sponsor to provide the Architect with “standard specifications” very early in the design process in order to communicate the types of equipment, materials, fixtures, and finishes that meet the Sponsor’s expectations. This is particularly important for Sponsors that manage more than one building because operating costs can be reduced significantly by replicating things that work, and avoiding those things that don’t. In addition, standardized specifications may result in more cost effective design fees because many fixtures and finishes can be selected in advance for the Architect, thereby saving the time it would have taken the Architect to make those selections. Finally, most designers appreciate working with a Sponsor who proactively communicates this type of information in advance, rather than wasting the design team’s time and effort by rejecting proposed fixtures and finishes due to previously held preferences.

#### **A4(c) Construction Contract**

The Construction Contract is an agreement between the general contractor and Sponsor that includes the “CONTRACT FORM” and “SCHEDULE OF VALUES”.

All construction contracts must conform to the terms of the Loan or Grant Agreement and be approved in advance by MOH. It is critical that the construction contract include all Funder Requirements not otherwise adequately addressed in the Project Manual.

**CONTRACT FORM:** Negotiated bid projects often use a “Cost Plus a Fee with a Guaranteed Maximum Price” (“GMP”) form of construction contract.<sup>8</sup> Under a GMP contract, the general contractor is typically reimbursed for their actual costs, plus a predetermined fee, up to a specified maximum amount. If the actual costs are less than the GMP, the Sponsor pays less than the GMP amount. However, if the actual costs exceed the GMP, the Sponsor is not responsible for any costs above the GMP. For progress payments under a GMP contract, the Sponsor should evaluate both the general contractor’s actual expenses and the construction completion percentage. Regardless of the form of contract, the Sponsor must insure that adequate funds remain to complete the project. Finally, the GMP only relates to the scope of the work defined by the Contract Documents. Therefore, if the Contract Documents change for any reason, then the GMP may also change.

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<sup>8</sup> Sponsors utilizing a GMP contract sometimes purchase and modify a standardized form contract, such as the American Institute of Architects (“AIA”) A111 General Contract Agreement and the A201 General Conditions.

“Best practices” call for the Sponsor to fully negotiate the terms of the construction contract as early in the preconstruction process as possible, with all terms except Contract Sum resolved prior to subcontractor bidding. Start of construction can be significantly delayed if the Sponsor waits until after the Contract Sum is negotiated before finalizing the remaining sections of the construction contract.

Hard bid projects typically use a “Stipulated Sum” form of construction contract.<sup>9</sup> Under a Stipulated Sum contract, the general contractor is entitled to the bid price, regardless of the actual costs. If the actual project costs are significantly lower than the stipulated sum, the general contractor retains the difference as profit. If the project costs are greater than the stipulated sum, the Sponsor’s financial obligation to the general contractor is capped by the stipulated sum. Unlike a GMP contract, the Sponsor using a stipulated sum contract typically does not evaluate the general contractor’s actual costs. Rather, for progress payments the Sponsor simply evaluates the construction progress to insure that adequate funds remain to complete the project. In addition, as with the GMP contract, if the scope of the work defined by the Contract Documents changes for any reason, then the general contractor may be eligible for a change in the stipulated sum. Finally, in order to insure the most accurate bid pricing, the proposed stipulated sum construction contract, along with any modifications, should be included in the bid package distributed as part of the RFB.

Please note, for HUD Section 202 or 811 projects, a specific HUD generated form of construction contract must be used.

**SCHEDULE OF VALUES:** The schedule of values is a spreadsheet that breaks the construction contract down into specific line items by trades, typically based on the Construction Specifications Institute (“CSI”) division format. The schedule of values is used by the Project Team to evaluate construction completion for the general contractor’s monthly progress payment applications (“Draws”). It is impermissible to overvalue early construction work (“front loading”). The schedule of values must be approved in advance by MOH Construction Supervisor and be included as an attachment to the construction contract. The Sponsor may require the general contractor to further break down specific line items (particularly larger scheduled values) by sequence (example: rough-in and finish), and/or by location (example: floor 1, building 2, or phase 3, etc.) to ease in the evaluation of completion percentages for progress payments.

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<sup>9</sup> Sponsors utilizing a Stipulated Sum contract sometimes purchase and modify a standardized form contract, such as the American Institute of Architects (“AIA”) A101 General Contract Agreement and the A201 General Conditions.

Subcontract dollar amounts should be accurately reflected as individual line items on the Schedule of Values for billing purposes. This insures that general contractor overhead and profit is not “buried” in individual scheduled values.

Please note, for HUD Section 202 or 811 projects, a specific HUD generated schedule of values must be used.

#### ***A(5). Other Preconstruction Considerations***

**EXPLORATORY DEMOLITION AND SYSTEMS TESTING:** Projects involving rehab are usually designed to rely upon some existing building systems. “Best Practices” call for the project team to conduct exploratory demolition (“demo”) and systems testing during the preconstruction period to evaluate design assumptions and avoid unforeseen conditions that can lead to costly change orders during construction.

Sponsors are responsible for ensuring that all demo work is performed in accordance with all applicable codes and regulations. Sponsors are also advised to consult with a Title Company regarding any “early start of construction” issues.

Sponsors should be sensitive to the needs of tenants in an occupied building during exploratory demolition and systems testing. MOH encourages Sponsors to convene one or more tenant meetings to describe the scope, impacts and purpose of such work before it begins. Similarly, Sponsors must notify tenants in advance regarding the schedule and duration of any utility shut-offs.

Planning of exploratory demolition and systems testing (and occupied rehabilitation work generally) should consider such issues as the following:

- controlling dust and noise;
- maintaining life safety systems and fire egress;
- building security, particularly in construction areas;
- avoiding monopolization of common areas, corridors and elevators by construction personnel;
- ensuring that only properly authorized personnel have access to the building; and
- providing proper advance notice before entering tenants’ units.

**MEANS AND METHODS:** Although the general contractor is typically responsible for the “means and methods” of construction, there are some related issues that the Sponsor needs to consider during the pre-construction period.

If the general contractor will need access to neighboring property during construction, the Sponsor must insure that either: access is granted prior to the execution of the construction contract, or the Contract Documents clearly state that responsibility for securing access resides solely with the general contractor.

For occupied rehabs, the Sponsor should provide the general contractor with all known working constraints, including: work days and hours; access; security and safety; relocation and phasing; utility shut-off requirements; dust and noise control; areas for storing and staging, etc. Failure to clearly define project working constraints may result in the general contractor assuming greater flexibility than can be accommodated, thereby triggering delay and unexpected costs to the project.

## **B. CONSTRUCTION**

Before construction begins there are two preliminary meetings that must occur: (a) the PRE-CONSTRUCTION CONFERENCE, and (b) the PRE-JOB MEETING.

### ***B(1). Pre-Construction Conference***

Pre-construction conferences with contractors and subcontractors are typically conducted jointly by MOH's Labor Standards Compliance Officer and HRC staff. Packages with required forms related to labor standards, HRC goals and procedures and Section 3 hiring are distributed to the general contractor and all subcontractors at the meeting. It is strongly recommended that a representative of the Sponsor participate in the pre-construction conference to become familiar with the reporting requirements of the general contractor and subcontractors. The Sponsor should contact the HRC Compliance Officer and MOH's Labor Standards Compliance Officer at least two weeks in advance to schedule this meeting.

### ***B(2). Pre-Job Meeting***

A Pre-Job Meeting including the Sponsor, general contractor, Owner's Representative (if any), Architect, and any party charged with signing Payment Applications or Change Orders (e.g. other lenders) is conducted by MOH Construction Supervisor. The purpose of the Pre-Job Meeting is to clarify roles and responsibilities for the project team members, to insure that the work proceeds efficiently, to clarify general contractor payment procedures, and to identify any outstanding items that need to be resolved prior to the issuance of a Notice to Proceed. In addition to general communication and documentation issues, the topics reviewed at the Pre-Job Meeting include the following:

- (a) NOTICE TO PROCEED;
- (b) JOB SITE MEETINGS AND MINUTES;
- (c) PAYMENT APPLICATIONS,
- (d) CHANGE ORDERS,
- (e) SCHEDULE,
- (f) FIELD INSPECTIONS,

## **B2(a) Notice To Proceed (“NTP”)**

The Notice to Proceed (“NTP”) is the document the Sponsor uses to direct the general contractor to begin the work under the construction contract. The Sponsor must receive prior approval from MOH before issuing the NTP. The Sponsor is cautioned that the issuance of a NTP prior to receiving written MOH approval is grounds for stopping work and rejecting payment applications, thereby subjecting the Sponsor to significant financial consequences.

MOH uses project and construction management checklists to evaluate compliance with Federal and local requirements prior to approving a request to issue a NTP. Copies of these checklists are available from the MOH project manager upon request. Upon completion of all pre-construction requirements and receipt of written approval from MOH, the Sponsor may issue the NTP to the general contractor. The Sponsor shall provide a copy of the NTP to MOH Construction Supervisor, HRC and the Labor Standards Compliance Officer at the time it is provided to the general contractor.

## **B2(b) Site Meetings**

The project team should meet regularly at the job site to evaluate construction progress and to expedite the flow of information between team members. Site meetings are typically held on a weekly basis. A designated member of the project team must provide minutes from site meetings to all participants and MOH Construction Supervisor in a timely manner. The date and time for site meetings is established at the Pre-Job.

## **B2(c) Contractor Payment Applications (“Pay Apps”)**

MOH’s approval is required for every general contractor payment application (“Pay App”) under the Construction Contract, regardless of the source of funds used to pay for a particular Pay App. The project team meets monthly at the job site (“Draw Meeting”) to evaluate construction progress and to review, and approve as applicable, the general contractor’s Pay App. The Pay App must be provided in a pre-approved format, including a completed MOH Cover Sheet *\*\* (see Appendix III, Attachment k).*

In order to avoid delay in the processing of Pay Apps, parties who are required to sign (including general contractor, Sponsor and Architect) should attend each Draw Meeting. MOH should be present at all Draw Meetings, but MOH will not sign a Pay App prior to execution by the general contractor, Architect and Sponsor. The date and time for the Draw Meetings is established at the Pre-Job.

Pay Apps are limited to work in place at the time of the Draw Meeting. Requests for payment for materials stored on site should be accompanied by supporting invoices. Request for payment for equipment or materials stored offsite requires prior approval, verification by Sponsor, proof of transfer of ownership, and

evidence of insurance. “Best practices” call for the general contractor to provide a draft Pay App in advance of the meeting to expedite the review and approval of the Pay App at the Draw Meeting.

The Sponsor submits a wet signed Pay App to MOH Project Manager as part of the overall monthly Draw Request. The Draw Request typically includes the general contractor’s Pay App, as well as any other invoices, including Architect’s invoices and other reimbursables. The total time for processing a complete and accurate progress Pay App by all parties should not exceed thirty (30) days. Pay Apps requesting release of retention may take longer to process and may require additional documentation.

As more fully described in the Pre-Con, the Sponsor is responsible to insure that all contractors submit accurate and timely certified payroll reports (typically weekly) and other necessary documentation to the Labor Standards Officer. Failure to provide timely and/or accurate certified payroll reports is reason for delaying payment and for withholding funds.

The Sponsor should be aware that if the project is a HUD Section 202 or 811, that a somewhat different payment application process will be used, and the time frame for processing Pay Apps may also differ.

**Mechanics Lien Waivers and Stop Notices:** The general contractor must provide a Conditional Waiver and Release Upon Progress Payment with each Pay App. For convenience, the MOH Cover Sheet includes an approved form. In addition, the general contractor shall provide a fully executed Unconditional Waiver and Release Upon Payment in the statutory form (Cal. Civ. Code sec. 3262) for every payment received. Finally, the Sponsor should receive lien waivers from all subcontractors, suppliers or laborers who file preliminary notices. MOH reserves the right to require copies of these waivers upon request.

The general contractor must provide releases, bonds or other approved form of release for any subcontractor, supplier or laborer that files a Stop Notice or Mechanics Lien. Failure to provide an approved release or bond can delay processing of Pay Apps and can result in the Sponsor directly resolving the matter and “back charging” the general contractor for the costs incurred.

### **B2(d) Change Orders**

A Change Order (“CO”) is used to modify the Contract Documents when the Sponsor and general contractor are able to reach agreement regarding a change in the Contract Sum or Time. A Construction Change Directive (“CCD”) is used to modify the Contract Documents when the parties cannot agree to a change in the Contract Sum or Time, for example when an unexpected issue arises that must be

addressed before the parties can fully agree upon the cost or time impacts. For purposes of this Manual, "CO" shall be used to refer to both COs and CCDs.

MOH's approval is required for every CO, regardless of the dollar amount or the source of funds used to fund the change. In order to expedite MOH's review, MOH Construction Supervisor should be copied on all change order proposals at the time they are prepared by the general contractor. However, MOH only approves changes upon request by the Sponsor.

All COs must be in a pre-approved format and be identified as distinct line items on Pay Apps for payment purposes. COs must clearly delineate and subtotal work by individual subcontractors. COs should provide sufficient back-up documentation to clearly describe the reason and origin for the change (owner upgrade, error or omission, or unforeseen circumstance); citation to the Contract Documents; detailed labor, material and equipment breakdowns (including quantities and rates); unit costs (as appropriate); and separate line items for overhead and profit. The Sponsor is cautioned to consult with MOH before executing the Construction Contract in order to establish maximum CO mark-up (including overhead and profit for the general contractor and all tiers of subcontractors) that comply with MOH standards.

COs should be approved prior to the performance of the work. Pay Apps will be rejected if they include a request for payment for work not included in the original Contract Documents, or an approved CO.

**FORCE ACCOUNT:** In the event the Sponsor (with MOH's consent) approves work to be performed on a Time and Materials basis ("T&M" or "Force Account"), or pursuant to unit prices, the general contractor must provide a timely summary of work performed and costs incurred. Failure to provide a reasonably accurate summary within seven (7) calendar days of the work being performed (including on-going work) may result in MOH rejecting an associated request for payment as untimely. Typically it is sufficient to provide a rough T&M accounting at the weekly site meeting to be included in the minutes.

**CHANGE ORDER LOGS:** MOH shall be provided a Change Order Log (CO Log) on a monthly basis, typically at the Draw Meetings. The CO Log should include all approved and pending changes. "Best practices" call for the CO Log to include all currently foreseeable potential changes, including an estimate of the cost for each potential change.

### **B2(e) Construction Schedule**

The general contractor must submit a revised Construction Schedule with each Pay App. The revised Construction Schedule should accurately describe remaining work to be performed. The revised Construction Schedule is for

informational purposes only. The Contract Time can only be altered via an approved CO.

“Best practices” call for the general contractor to provide a “look ahead” schedule at each site meeting that identifies the specific tasks that will be performed in the coming 2 to 4 weeks, and describes any milestones (inspections, utilities, phasing, deliveries, etc.) that may be important for coordination with other team members. In addition, “best practices” call for the Construction Schedule to utilize the “Critical Path” format that highlights those items that need to be completed on time in order for the project to stay on schedule. Finally, “best practices” call for the Construction Schedule to also include work completed to date, to allow for a comparison of actual task durations against scheduled durations.

### **B2(f) Field Inspections**

Inspections are made at various times during construction to evaluate progress, and compliance with the Contract Documents, codes, regulations, Labor Standards, and Section 3 Hiring requirements. The general contractor should provide hard hats to persons inspecting the site, as necessary.

### ***B(3). Completion of Construction***

Prior to release of retention, the Sponsor must insure that the work is completed in accordance with the Contract Documents, all applicable codes and regulations, and that there are no outstanding liens or claims. The following documents are typically required prior to the release of retention: (a) CERTIFICATE OF SUBSTANTIAL COMPLETION; (b) CERTIFICATE OF OCCUPANCY; and (c) NOTICE OF COMPLETION.

### **B3(a) Certificate of Substantial Completion**

The Certificate of Substantial Completion is a document prepared by the Architect that indicates that the project is completed to the extent that it is available for use for the purposes for which it was designed. If there are any uncompleted items, they should be noted on an attached “punch list.” If the Sponsor is seeking 100% payment for the project (minus retention), then the items on the punch list should have dollar values attributed to them, and the value of the Pay App needs to be reduced by at least 150% of the value of those punch list items. The issuance of the Certificate of Substantial Completion may have contractual implications, such as triggering the start of the warranty period. The Sponsor should provide MOH Construction Supervisor a copy of the Certificate of Substantial Completion upon receipt.

### **B3(b) Certificate of Occupancy (“C of O”)**

The Certificate of Occupancy (“C of O”) is a document provided by DBI, typically only for new construction projects, that indicates that all code required work has been completed and that the project is safe for human habitation. The Sponsor

should provide a copy of the C of O to MOH Construction Supervisor upon receipt. The C of O is typically one of the prerequisites for release of retention on new construction projects.

Often new construction projects have financing or other rent-up considerations that require the issuance of a Temporary Certificate of Occupancy (“TCO”). The Sponsor should provide a copy of a TCO to MOH Construction Supervisor upon receipt. TCOs are effective for the time period established on the face of the document, and allow the Sponsor to occupy the building in accordance with the terms of the document. However, a TCO may be inadequate for release of retention because of uncompleted code related work. Upon request by the Sponsor, MOH may consider a partial release of retention following the issuance of a TCO.

A C of O is not typically provided for rehab projects, unless the building was “red tagged” due to serious deficiencies. Therefore the Sponsor should maintain copies of the signed off Job Cards used by DBI field inspectors to indicate that the (code required) work is complete, and provide copies to MOH Construction Supervisor upon receipt.

### **B3(c) Notice of Completion**

Final retention will not be released until the expiration of the statutory period within which contractors, suppliers and laborers may file mechanics liens. A Notice of Completion is a document recorded by the Sponsor that serves to shorten the period within which contractors, suppliers and laborers may file a mechanics lien. The Sponsor should provide MOH Construction Supervisor with a copy of the Notice of Completion upon recordation. Failure to record a Notice of Completion may result in a delay in the release of retention. If the Sponsor does not record a Notice of Completion, the Sponsor must notify MOH Construction Supervisor in writing stating the date the work on the project was completed.

### ***B(4). Punch List***

As noted above, a “Punch List” is a list of outstanding items to be completed by the general contractor that are not so significant as to prevent the building from being used for the purposes for which it was intended. Sponsors are cautioned against allowing tenants to occupy units when there are still punch list items remaining to be completed within the units because access to, and work within, occupied units is particularly difficult. MOH typically will not release final retention until the Sponsor notifies MOH in writing that all punch list items have been completed. After the punch list is complete, any future deficiencies may be considered warranty issues.

***B(5). Close-Out Documentation and Warranties***

The general contractor must provide the Sponsor with the requisite close-out documents, including accurate as-built drawings, keys, instruction manuals, warranty information, and equipment training prior to the release of retention.

“Best practices” call for the Sponsor to schedule a warranty walk-through of the project with the general contractor and Architect eleven (11) months after the issuance of the Certificate of Substantial Completion, or at another pre-determined date prior to the expiration of the warranty period.

***B(6). Release of Retention***

All requests for release of retention must be accompanied by an unconditional lien waiver for payments received to date. In addition, the request for release of retention should include a conditional lien waiver that covers the value of the request

After the preceding items have been resolved, the Sponsor should expeditiously request release of retention. The Sponsor is cautioned that a request for release of retention may take longer to process than a typical progress payment application in order to insure that all applicable requirements have been met, including certified payroll, Federal and HRC requirements. Following the final release of retention, the Sponsor should continue/resume providing Monthly Project Updates to MOH Project Manager covering rent-up progress and any outstanding issues through project close-out.

The Sponsor is cautioned that Section 202 and 811 projects sometimes require a year or more for HUD to approve final release of retention.

## **APPENDIX I: GLOSSARY OF ACRONYMS**

AA - Affirmative Action  
AIA – American Institute of Architects  
A & E – Architects and Engineers  
AND – Asian Neighborhood Design  
CCD – Construction Change Directive  
CDBG – Community Development Block Grant  
CO – Change Order  
CSI – Construction Specifications Institute  
BAAQMD – Bay Area Air Quality Management District  
CalOSHA – California Occupational Safety and Health Administration  
CEQA – California Environmental Quality Act  
LBE- Local Business Enterprise  
DBI – Department of Building Inspection  
DCP – Department of City Planning  
DD – Design Development  
DOL – Department of Labor, The U. S.  
DPW – Department of Public Works  
EEO – Equal Employment Opportunity  
GC– General contractor  
GMP – Guaranteed Maximum Price  
GSA – General Services Administration  
HOME – Home Investment Partnership Program  
HRC – Human Rights Commission  
HUD – Housing and Urban Development, The Department of  
MOD – Mayor’s Office of Disability  
MOH – Mayor’s Office of Housing  
MOH CS – Mayor’s Office of Housing Construction Supervisor  
MOU – Memorandum of Understanding  
NEPA – National Environmental Policy Act  
NISB – Notice of Intent to Solicit Bid  
NTP – Notice to Proceed  
OMB – Office of Management and Budget  
OSHA – Occupational Safety and Health Administration  
RFB – Request for Bids  
RFP – Request for Proposal  
RFQ – Request for Qualifications  
SFFD – San Francisco Fire Department  
SFUSD – San Francisco Unified School District  
SFWD – San Francisco Water Department  
SOIS – Secretary’s of the Interior’s Standards  
TCO – Temporary Certificate of Occupancy

## APPENDIX II: MOH CONTACTS

### **MOH Construction Supervisor**

\_\_\_\_\_, (415) 701- 5528

### **MOH Housing Development Director**

Joel Lipski (415) 701-5510

### **MOH Project Managers – Development Team**

Teresa Yanga (415) 701-5515

Joan McNamara (415) 701-5532

Scott Madden (415) 701-5536

Anne Romero (415) 701-5525

Ty Robinson (415) 701-5526

Wayne Lawrence (415) 701-5537

### **MOH Loan Administrator**

Georgia Martin (415) 701-5535

### **MOH Development Assistant**

Lynn Hua (415) 701-5538

### **MOH Housing Compliance Manager**

Brenda R. Burrell (415) 701-5545

### **MOH Labor Standards Compliance Officer**

Salomon Rizzo (415) 701-5527

### **Human Rights Commission Representative**

Roel Villacarlos (415) 252-2539

## **APPENDIX III: ATTACHMENTS**

- A. Notice of Intent to Solicit Bid
- B. Monthly Project Updates
- C. AA/EEO Provisions
- D. Attachment A - Request for Environmental Review
- E. Section 3 Clause
- F. Section 3 Plus Assurance
- G. Section 3 Plus Action Plan
- H. HUD 4010 Form
- I. MOH Pay Application Cover Sheet
- J. NTP Checklist - Project Manager
- K. NTP Checklist - Construction Manager
- L. Release of Retention Checklist