



Project Name: \_\_\_\_\_

PHFA Project #: \_\_\_\_\_

Date of Conference: \_\_\_\_\_

## Pre-Construction Conference Minutes

Location of Conference: \_\_\_\_\_

General Contractor: \_\_\_\_\_

Contract Amount: \_\_\_\_\_

Applicable Wage Determination: \_\_\_\_\_

**Attendees: (SEE SIGN-IN SHEET):**

The following requirements are applicable to the construction contract for the above referenced project that is being carried with federal funds. The Pennsylvania Housing Finance Agency’s (PHFA) goal is to assure that the General Contractor (GC) is paid in a timely manner and to avoid violations of applicable labor standards and civil rights provisions. The requirements discussed today are included in the Construction Contract and Subcontracts, and PHFA’s Federal Compliance Supplement – General Conditions & Requirements.

All forms and information required throughout the construction phase will be given to PHFA’s Compliance Officer, Labor Standards and Equal Employment Opportunity (EEO) Officers.

All subcontractors shall discuss all forms, information and questions regarding labor standards compliance and civil rights compliance with the general contractor’s Labor Standards Officer and Equal Employment Opportunity Officer, and the owners Equal Employment Opportunity Officer (listed below):

***General Contractor’s Labor Standards Officer:***

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

***General Contractor’s Equal Employment Opportunity Officer:***

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

***Owner’s Equal Employment Opportunity Officer:***

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_



**Executive Order (E.O.) 11246/Non-Discrimination:**

*(Reference Federal Compliance Supplement: General Conditions & Federal Requirements, pages 1-12 2and E.O. 11246 Section.)*

- The GC and all subcontractors must comply with Equal Employment Opportunity laws and may not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, or national origin.
- The GC must post its Equal Opportunity Policy and the State Contractor’s Nondiscrimination Notice on the job site.
- The chart on page 38 of Federal Compliance Supplement includes the E.O. 11246 Minority Participation (hiring) Goals for each county in the Commonwealth. All contracts and subcontracts must include the appropriate goal. (General Conditions page 5)
- Each month, the GC shall provide the following to PHFA’s Compliance Officer:
  1. Subcontractor E.O. 11246 Certifications. Prior to execution of subcontracts for more than \$10,000, the subcontractor must sign the E.O. 11246 Subcontractor Certification form. (See page 35 of the Federal Compliance Supplement to PHFA’s PennHomes Design Standards.)
  2. Copies of GC letter to the United States Department of Labor (USDOL) for each construction contract and subcontract exceeding \$10,000. The GC must send these letters to the USDOL within ten days of the contract award. (See PennHomes Federal Compliance Supplement for contents of this letter – page 33 of E.O. 11246 Section.)

**Labor Standards:** (Generally applicable to projects with 12 or more Home-Funded Units, 9 or more units with Section 8 Project-Based Assistance, 8 or more units if CDBG Funding used for Construction costs.)

*(Reference Federal Compliance Supplement: General Conditions & Federal Requirements, pages 12-20)*

1. Prevailing wages:
  - All mechanics and laborers, including apprentices and trainees working directly on the site are covered.
  - Workers must receive no less than the prevailing wages.
  - Wage determination must be posted on the site and made available to workers.
  - Wage poster of the Secretary of Labor must be posted at the job site. *(Wage Poster given to Contractor)*
  - Wages must be paid weekly.
  - Only applicable deductions will be allowed and must be listed on the payrolls.
  - Self employed persons are not covered by prevailing wages, but must submit weekly payrolls.
2. Overtime:
  - Overtime on the federal job is for all hours worked in excess of 40 hours per week.
  - Overtime must be paid at one half the base hourly rate of pay for all hours over 40 on the Federal job.
  - Work covered includes transporting materials to and from the site. This does not include deliveries from a supplier.
3. Fringe Benefits:
  - Must be paid in cash unless being paid into an approved plan.
  - All approved plans must list the hourly amount being paid into the plan for the length of the contract.

- The GC must provide copies of all plans to PHFA's Compliance Officer and retain these plans in its contract files for five years after the construction completion date.
  - Fringes must be paid on all hours worked.
4. Classifications:
- Review all classifications intended to be used for the project.
  - Any class not listed will be discussed with PHFA's Compliance Officer. The agency will request a determination of the most appropriate classification for a class not listed from The Pennsylvania Department of Community and Economic Development. Any classifications not listed that you intend to use should be requested prior to the start of construction.
  - Workers doing work in more than one classification shall be listed on the payrolls in each classification. A time sheet or other records must show the actual hours spent in each classification.
5. Apprentices and Trainees:
- They are permitted in enrolled in a bona fide program. Documentation must be included in the contract files. Apprenticeship programs must be registered with the USDOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state Apprenticeship Agency recognized by The Pennsylvania Department of Community and Economic Development. Trainee Programs must have received prior approval, evidenced by formal certification by the USDOL, Employment and Training Administration.
  - Wages paid must be at the predetermined rate as per the applicable program.
  - Applicable ratios of apprentices/trainees to journeyman must be in the accordance with the terms of the State or USDOL approved programs.
6. Subcontracting:
- The GC must document MBE/WBE and Section 3 outreach monthly throughout the construction period.
  - The GC and all subcontractors with contracts in excess of \$100,000 must document Section 3 outreach monthly throughout the construction period.
  - The GC cannot hire any contractor or subcontractor who has been suspended or debarred. It is the GC's responsibility to ensure their eligibility.
  - All contracts and subcontracts must contain the Federal Compliance Supplemental - General Conditions.
  - Prior to the PHFA's Compliance Officer's approval of the initial payout for each subcontractor:
    1. Within 90 days of the start of construction the PHFA Technical Service Field Representative will review
    2. The PHFA's Technical Service Field Representative must review the subcontract to ensure that it includes all required contract provisions. (The Agency will not retain copies of the subcontracts. The GC must maintain all subcontracts, including the federal conditions, until five years after the construction completion date.) **AND**
    3. The GC must submit copies of all Subcontractor reporting forms (E.O. 11246, MWBE, Section 3, Payroll).
7. Complaints Regarding Payment of Wages:
- Any complaints by workers regarding classifications or underpayment must be addressed immediately.
  - Contractors cannot fire or discriminate against anyone because they complain about their wage rate or classification.

8. Payrolls:

- Workers must be paid weekly
- The GC and all subcontractors must submit certified payrolls weekly. If someone other than the owner/officer of the company will sign the payroll form's Certificate of Compliance, written authorization from the contractor must be in the contract files.
- Payrolls must include the following information
  1. Employer's I.R.S. Tax I.D. number (*Initial Payroll Only*)
  2. Employee Name
  3. Employee Address & Social Security Number (*Initial Payroll Only*)
  4. Correct Classification, Rate of Pay, and the Amount of Fringes
  5. Daily and weekly number of hours worked on the PHFA project
  6. Deductions and actual wages paid
- Payrolls must be numbered sequentially; the first payroll should be marked "FIRST" followed by Payroll 2 then Payroll 3, and so on. The last payroll must be marked "FINAL".
- During any work week with no work performed on the site, the contractor will submit a certified payroll with "NO WORK PERFORMED" written across the payroll **OR** a "NO WORK REPORT".
- The GC and subcontractors shall make their records available to PHFA, The Pennsylvania Department of Community and Economic Development, or other authorized representative upon request.
- Authorized PHFA representatives shall be permitted to interview employees of the GC or subcontractors during work hours.
- Payrolls and basic payroll records must be maintained by the GC for a period of five years after the project's completion date. If any litigation claim, audit, or other action remains unresolved after the five year period, records relating to this issue must be retained until the action is resolved.
- Providing the name, address, and telephone number of the people who are to receive copies of the payroll forms (general contractor, PHFA Compliance Officer)

9. Health & Safety:

- No laborer or mechanic shall be required to work in conditions that are unsanitary, hazardous, or dangerous to his/her health and safety.
- This clause must be included in all subcontracts.

10. PHFA Responsibilities:

- Interview employees at the work site. (At least one of each classifications and each subcontractor.)
- Take written statements from employees.
- Document observations.
- Examine payroll records.
- Examine records relating to fringe benefits, apprentice registration, apprentice/trainee certifications, contracts, and time logs.

11. Contractor's Responsibilities:

- Responsible for review and timely submission of all subcontractors' payrolls.
- Liable for violations or underpayment to workers by itself or subcontractors.
- Contractor is responsible for all underpayment.

12. Actions in the Event of Labor Standards Violations:

- Delay money owed to the contractor.

- Set aside or disperse, from money owed to the contractor, amounts needed to cover wages or fringe benefits, uncompensated overtime, or liquidated damages.
- Terminate the contract.
- Initiate criminal proceedings.
- Debar contractor from working on similar projects for up to one year.
- Debar contractor from working on any Federal projects for up to three years.
- Assess liquidated damages (*unless violations were inadvertent*).

**Section 3:**

*(Reference Federal Compliance Supplement: General Conditions & Federal Requirements, pages 21-22)*

- Contractors must post notices sent to labor organizations or representative of workers with which the contractor has a collective bargaining agreement or understanding, if any. (This notice is required by the “Section 3 Clause” and advises the organizations of the contractor’s section 3 commitments). All contracts over \$100,000 must include the Section 3 Clause.
- The Federal Compliance Supplement includes the project owner’s MBE/WBE/Section 3 Plan, which provides MBE, WBE, and Section 3 definitions and requirements.
- Safe Harbor for Compliance:
  - a. 2013: 10% of total dollar amount of all building trade contracts and 3% of all other contracts
  - b. 2014: 10% of total dollar amount of all building trade contracts and 3% of all other contracts.
  - c. See Owner’s Section 3 Plan for applicable “Safe Harbor” employment goals for “new hires”. (30% of Total Work Force)
- Each month, the GC shall provide the following to the PHFA’s Compliance Officer, for itself and all subcontractors with contracts in excess of \$100,000:
  - a. Workforce Employment and Training Needs Table: (Exhibit 2 – Project Owner & General Contractor) This form estimates the number of workers and new hires that the GC and each subcontractor will need to complete the job. The GC completes this form prior to the final loan closing. The GC shall require that subcontractors complete this form prior to execution of any subcontract over \$100,000. The GC shall submit copies of a subcontractor’s Workforce Employment and Training Needs Table to the PHFA Compliance Officer with the first payout request for the subcontractor.
  - b. MBE/WBE/Section 3 Solicitation & Commitment Statement: (Exhibit 3) The GC shall complete this form to document Section 3, MBE, and WBE solicitations, quotes and commitments. (Note that the GC’s MWBE outreach should be done for MWBE subcontractors as well as MWBE material suppliers included in the DCED MWBE list that was provided to the project owner prior to the PHFA loan commitment). Subcontractors with contracts over \$100,000 shall complete this form to document Section 3 solicitations, quotes, and commitments for work that the subcontractor contracts out to another subcontractor. (Note that subcontractors are not required to solicit MBE/WBE participation). The GC shall submit copies of these forms until all subcontracts and material contracts have been awarded.
  - c. Invitation for Bid Evaluation and Determination: (Exhibits 5 & 6) *Responsive or Non-Responsive* - The GC must evaluate prime contractor bids (for contracts over \$100,000) to determine whether appropriate action was taken to utilize Section 3 businesses to the greatest extent feasible. This evaluation and determination conclusion must be provided to the Agency with the first payout for each subcontract of more than \$100,000.
  - d. Contractor’s Monthly MBE/WBE/Section 3 Business Utilization Report: (Exhibit 9 – Owner & Exhibit 10 – Contractor) The GC shall complete this form to document all Section 3, MBE, and WBE contract awards. (Note that the GC’s MWBE outreach should be done for MWBE subcontractors and MWBE material suppliers included in the DCED MWBE list that was provided to the project owner prior to the PHFA loan commitment). Prime subcontractors (over \$100,000) shall also complete this form to document Section

3 contract awards. (Note that subcontractors are not required to report on MBE/WBE awards). The GC shall provide copies of these forms, until all subcontracts and material contracts are awarded.

- e. Subcontract's Monthly Business Utilization Report: (Exhibit 11) Subcontracts and material suppliers shall complete this form to confirm contract and payment information. MBE/WBE/Section3 subcontractors and material suppliers shall submit these forms to the project owner who will be responsible for submitting them to the PHFA's Compliance Officer on a monthly basis.
- f. Section 3 Employment & Training Report: (Exhibit 12 – Owner & Exhibit 13 - Contractor) The GC and subcontractors with contracts over \$100,000 shall complete this form to document new hires. This report shall be submitted with each payout to document new hires. Do not submit this form if all the Section 3 Workforce Needs Tables state that no new hires are necessary for the project.
- g. Section 3/MBE/WBE Annual Report (HUD 60002 & 2516): Project owners must submit this form, which includes GC and subcontractor data, on or before the project's end or end of construction. These forms shall be submitted to the Agency's Compliance Officer along with the final construction payment request. This form must include data for all GC and prime contractor contracts and new hires. (Prime contractors for Section3 purposes are those with contracts over \$100,000. Prime contractors are those that contract directly with the project owner rather than the GC).

Also.....

- If the GC does not meet the Section 3 "Safe Harbor Goals", the GC must provide PHFA with evidence that a good faith effort was made to utilize Section 3 businesses and hire Section 3 residents "to the greatest extent feasible". (See attached File Checklist for Contractors who Have Not Met Section 3 "Safe Harbor Goals" for examples of documentation needed to show evidence the "greatest extent feasible" was taken).

**Environmental Concerns:**

- All construction contracts must use Pennsylvania Department of Environmental Protection (DEP) approved disposal facilities for the disposal of construction debris. (All subcontracts must include this provision).
- Title IV of the Lead Based Paint Poisoning Prevention Act prohibits the use of lead based paint in residential structures constructed or rehabilitated with federal assistance in any form.
- The GC and Subcontractors must notify the owner and the PHFA immediately if they discover and artifacts or other environmental subsurface conditions during construction.

**MBE/WBE Requirements:**

*(Reference Federal Compliance Supplement: General Conditions & Federal Requirements and MBE/WBE Section of the Supplement)*

- It is the GC's responsibility to meet the MBE and WBE Minimum Participation Levels (MPLs) in accordance with the MBE/WBE contract provisions (See pages 23-26 of Federal Compliance Supplement – General Conditions & Requirements). The GC should outreach MWBE participation by soliciting bids/quotation from the MWBE contractors and material suppliers included on the DCED MWBE list provided to the project owner prior to the PHFA loan commitment.
  - 2013: MBE - 5%, MWBE - 3 % & WBE - 3%
  - 2014: MBE - 5%, MWBE - 3 % & WBE - 3%
- Each month , the GC or project owner must submit the following to the PHFA's Compliance Officer:
  - MBE/WBE/Section 3 Solicitation & Commitment Statement (Exhibit 3 – GC & Project Owner)\*
  - Contractor's Monthly MBE/WBE/Section 3 Business Utilization Report (Exhibit 9 – Project Owner & Exhibit 10 – GC)\*
  - Subcontractor's Monthly MBE/WBE/Section 3 Utilization Report\*
- At the end of construction:
  - MWBE Annual Report (HUD Forms 60002 & 2516)\*

**\*Note: See Explanation on Page 6 under Section 3**

If the GC does not meet the MPLs, the GC must provide PHFA with evidence that:

- Failure to achieve these MPLs was not motivated by consideration of race or gender,
- That MBEs and WBEs were not treated less favorably than other; and
- That solicitation and commitment decisions were not based upon policies that disparately affect MBEs or WBEs. (See attached File Checklist for GCs Who Have Not Met MBE/WBE MPLs).

**Payment Provisions:**

Payment requisitions will be completed in accordance with the procedures set forth in the PHFA Pre-Construction Meeting Guide.

**Record Keeping Requirements:**

The GC must maintain all project-related records for a period of five years after the project's completion date. If any litigation claim, audit, or other action remains unresolved after the five year period, records relating to this issue must be retained until the action is resolved.

**SECTION 3**  
**“SAFE HARBOR GOALS”**

For Training & Employment:

- Evidence that attempts were made to recruit from the neighborhood, municipality, and county where the project is located through local media advertising, such as newspapers of general circulation, community television networks, and radio advertising.

The advertisement must highlight in bold print the employment and training opportunities will be provided to low and very low income persons, including participants in YouthBuild Programs, to the greatest extent feasible.

- Evidence that contractors consulted with the following organizations for assistance with recruiting Section 3 residents for positions:
  - State and local agencies administering training programs funded through Job Training Partnership Act (JTPA) or JOBS,
  - Probation or parole agencies,
  - Unemployment compensation programs,
  - Community organizations, and
  - Other officials or organizations
- Evidence that contractors maintain lists of all Section 3 residents who have applied, and employed such persons if otherwise eligible and qualified. If no vacancies existed at the time of application, contractors considered Section 3 residents for the first available openings.

For Contract Awards:

- Evidence that the GC maintains a list of eligible Section 3 businesses, using minority and disadvantage business listings. (These listings may be available from the U.S. Department of Labor, U.S. Small Business Administration, Pennsylvania Department of General Services’ Bureau of Contract Administration and Business Development, the Pennsylvania Department of Commerce’s Office of Small Businesses, community organizations, and public or private institutions serving the project area).
- Evidence that the GC contacted business assistance agencies, minority contractors’ associates, YouthBuild Program administrators, and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses.
- Evidence that the GC advertised contracting opportunities through trade association papers, newsletters, and local media, such as newspapers of general circulation, community television networks, and radio advertising. The evidence should verify that appropriate Section 3 language was inserted in bold print in all advertisements.
- Evidence that the GC contacted known Section 3 subcontractors who are included on listings or have responded to advertisements and expressed an interest in participating in the project.
- Evidence that the owner and GC actively support Section 3 joint ventures.

**FILE CHECKLIST FOR GENERAL CONTRACTORS WHO HAVE NOT MET**

### **MBE/WBE/SECTION 3 MINIMUM PARTICIPATION LEVELS (MPLs)**

General Contractor (GC) files must include evidence that failure to achieve MPLs was not motivated by consideration of race or gender, that MBEs/WBEs were not treated less favorably than others; and that solicitation and commitment decisions were not based upon policies that disparately affect MBEs/WBEs. This evidence must include the following.

- Evidence that the GC sent Notices of Invitations for Bids (IFBs) and Requests for Proposals (RFPs) to all (or at least 5 for each IFB/RFP) MBE/WBE firms on the DGS lists.
- Evidence that the GC sent notices to the following organizations. (as appropriate)
  - Local Minority Churches and Organizations
  - Appropriate Minority Business Technical Assistance Organizations and/or Schools
  - Appropriate Minority/Women Contractor Associations
  - Appropriate Minority/Women Trade Organizations
  - Advertisement in local newspaper(s) for at least three consecutive weeks. (In combination of Sunday weekly listing)
- Evidence that the GC made project plans, specifications and invitations for bids available to minority/women contractor associations and trade organizations.
- Evidence that the project owner provided the DGS MBE/WBE lists to the GC and that the GC conducted outreach to obtain bids from certified MBE/WBE firms.