

U. S. Department of Housing and Urban Development
Public and Indian Housing

Public Housing Agencies; Indian Housing Authorities;
Secretary's Representatives; State/Area Coordinators;
Area Service Center Counsels; Area Service Center
Contracting Division Directors; Directors; Administrators,
Offices of Native American Programs; Field Office Managers;
State Office Counsels; Field Office Public Housing Directors;
All Public Housing Contracting Staff

Notice PIH 97-40(HA)
Issued: 7/18/97
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General Conditions for Construction Contract, Form HUD-5370 (3/97)

1. **Purpose.** The purpose of this Notice is to transmit a new HUD-5370, General Conditions for Construction Contract for use by public housing agencies and Indian housing authorities (HAs).
2. **Background.** This form is required by Handbook 7460.8 Rev-1 for construction contracts awarded by public housing agencies and Indian Housing Authorities, referred to hereafter as Housing Authorities (HAs), using the sealed bid method of procurement. The form provides requirements for performance and compliance requirements for contractors and subcontractors. One of the compliance requirements is contained in Section 40 of the previous version (4/92) of the form HUD-5370 and relates to compliance with Section 3 of the Housing and Urban Development Act of 1968 and HUD implementing regulations at 24 CFR Part 135.

Section 3 was amended by the Housing and Community Development Act of 1992 and provides greater emphasis with respect to the public housing program. The Department published an Interim Rule on June 30, 1994 (effective August 1, 1994), amending the existing requirements at Part 135. Section 135.38 of the Interim Rule revised the language of the mandatory contract clauses required in all applicable contracts.

HUD provides two standard forms of contracts that contain the mandatory Section 3 contract clauses; the Architect/Engineer (A/E) contract (form HUD-51915) and the General Conditions. The A/E contract was revised in 1995 (see HUD Notice PIH 95-51) and included the revised mandatory clause required by the Interim Rule at 24 CFR 135.38. The HUD-5370, Section 40 transmitted by this Notice is being similarly revised to incorporate the mandatory contract clauses required by 24 CFR 135.38.

3. **Revisions.** The revisions to the new 5370 (3/97) are as follows:

- A. Section 40. This section was revised to incorporate the mandatory contract clause required by 24 CFR 135.38.
- B. Typographical Errors. Three typographical errors appearing in the previous edition of the form have been corrected. (Deletions are in **bold** typeface; additions are in *italics*.)

- (I.) Section 9., (e), first sentence.

If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with **order** *other contract* requirements and shall indicate its approval thereon as evidence of such coordination and review.

- (ii.) Section 13., (c), only sentence.

The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by **24** *29* CFR Part 1904.

- (iii.) Section 20., (a), (1), second sentence.

Acceptance may *be* partial or complete.

4. **Compliance.** As noted above, Section 3 regulations were amended on June 30, 1994. The Interim Rule revised the language contained in the mandatory contract clause. The mandatory contract clause in the Interim Rule is applicable to all contracts executed after the effective date of that regulation (August 1, 1994).

The new mandatory clause takes precedence over the old clause in all contracts executed after August 1, 1994, even if the form HUD-5370, General Conditions for Construction Contract containing the old Section 3 language was used. HAs, HA's contractors and contractor's subcontractors are reminded of their responsibilities under Part 135 and should consult with the Interim Regulation regarding compliance.

5. **Effective Date.** The form HUD-5370 is effective immediately.

/s/

Kevin Emanuel Marchman,
Acting Assistant Secretary for
Public and Indian Housing