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CHAPTER 2. SUBMISSION AND PROCESSING OF REQUEST FOR  
FIRM COMMITMENT FOR CAPITAL ADVANCE FINANCING

Section 1 - General

- 2-1. PROCESSING STAGE AND VARIATIONS. The Owner shall submit a Request for Firm Commitment for Capital Advance Financing. Where an Owner is given permission to bypass the Conditional Commitment Stage and proceed directly to the Firm Commitment Stage (see Paragraph 1-2 of this Handbook), all documentation specified in Chapter 1 of this Handbook shall be submitted as a part of the Request for Firm Commitment. Certain building components are eligible for capital advance proceeds when stored off-site at a location approved by the local HUD Field Office. For instructions on the handling of such advances, see Paragraph 4-1 of this Handbook.
- 2-2. DESCRIPTION OF FIRM COMMITMENT STAGE. Generally, HUD's review at the Firm Commitment Stage is to assure that the proposal conforms to Conditional Commitment processing conclusions; earlier determinations shall not be reexamined, except to the extent made necessary by changes in the Owner's proposal.
- Where the Conditional Commitment Stage is being by-passed or a new site is proposed, processing functions normally performed at the Conditional Commitment Stage apply, including the environmental assessment (see Paragraph 1-32 of this Handbook).
- 2-3. TARGET DATES. The Request for Firm Commitment shall be submitted within 120 calendar days after the date of the Conditional Commitment, or, where the Owner has been approved to bypass the Conditional Commitment Stage, within 180 calendar days after the Owner accepts the fund reservation. Final contract drawings and specifications must be submitted with the Request for Firm Commitment. The target date for issuing the Firm Commitment is 90 days after receipt of a complete Request.
- 2-4. REQUIRED EXHIBITS.
- A. The following exhibits (original and two copies) must be submitted with the Request for Firm Commitment:
1. Form HUD-92013, completed in its entirety;

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2. All architectural exhibits in final form;
  3. Form HUD-2328 - "Contractor's and/or Mortgagor's (Owner's) Cost Breakdown;
  4. Form HUD-92457 - Survey Instructions and Certificate and Survey;
  5. Evidence of Supportive Services Funding - Submit written evidence from the appropriate agency(s) indicating its continued commitment to fund or provide the supportive services for the proposed project to at least the same degree as what was committed in the letter supplied at the Conditional Commitment Stage. If the Conditional Commitment Stage is bypassed, the comparison shall be made to the commitment in the application for a fund reservation. If the agency(s) has reduced or withdrawn its commitment, the Sponsor must submit evidence of funding for the supportive services from other sources or the project will be cancelled. If the Sponsor will be paying for the supportive services with its own funds, it must submit updated financial forms as well as a new Form HUD-92013 Supp; and
  6. Any other exhibits and documentation which may have been required by the Conditional Commitment.
- B. Where the Owner proceeds directly to the Firm Commitment Stage, in addition to the exhibits listed in Subparagraph A. above, it shall submit those exhibits listed in Paragraph 1-6 of this Handbook.
- 2-5. RECEIPT OF REQUESTS FOR FIRM COMMITMENT FOR CAPITAL ADVANCE FINANCING. Requests for Firm Commitment processing shall be forwarded to the PC&R staff immediately upon receipt in the Field Office. The PC&R staff shall date-stamp and log in each Request and distribute it to the technical and program offices for screening for completeness.
- 2-6. SCREENING FOR COMPLETENESS.
- A. Each technical and program office shall review the Request to determine whether all request exhibits pertinent to its review have been submitted and are completed properly.

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(2-6) B. Comments shall be returned to the PC&R staff within one working day after receipt of the Request for review. The PC&R staff shall be responsible for assuring that the review comments are received in a timely fashion.

C. The PC&R staff shall compile the comments referenced above for each Request and forward them to the MHR.

2-7. ELIGIBILITY FOR TECHNICAL PROCESSING.

A. If a Request is complete based on the MHR's review of the technical and program staffs comments, PC&R will be advised to notify the technical and program staffs to begin processing.

NOTE: Processing functions are described in Section 2 of this Chapter.

B. If a Request is incomplete, the MHR shall prepare a letter for the signature of the Housing Director, requesting the Owner to correct the listed deficiencies by a specific date (generally not more than 15 days from the date of the letter). The letter also shall state that if the additional information is not received by the specified date, the Request will be returned.

C. Information submitted in response to the above letter shall be logged in by PC&R and forwarded to the MHR to review for acceptability. If the Request is then complete, the procedures outlined in Subparagraph A. above, shall be followed. If the Request is still incomplete, the MHR shall prepare a letter to the Owner returning the Request, outlining the deficiencies, and requesting the Owner to resubmit the application in a complete form.

2-8. COORDINATION OF TECHNICAL AND PROGRAM REVIEWS.

A. The PC&R staff is responsible for tracking the Request's progress through technical and program processing, and shall advise the MHR when target dates are not being met.

B. The MHR shall:

1. monitor the overall progress of the Request

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through processing,

2. identify problem areas, and
3. assist the technical and program staffs in securing any additional documentation or information needed to resolve problems and expedite processing.

- C. The Wage Requirement Clerk, (for projects consisting of 12 or more units) in consultation with the MHR, shall follow progress in order to determine the anticipated date for the start of construction. Where no general wage determination for the project has been published in the Federal Register, the Clerk will initiate the request to the Department of Labor for issuance of the schedule of Davis-Bacon Act wages for the project at the appropriate time in order to have a current wage rate determination in effect when construction begins.

NOTE: A group home is not covered by the labor standards because it is considered as one unit.

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## Section 2 - Technical Reviews

### 2-9. ARCHITECTURAL AND ENGINEERING ANALYSIS.

- A. General. Firm Commitment processing instructions in HUD Handbook 4460.1 REV-1, Architectural Analysis and Inspection for Project Mortgage Insurance, shall apply, except as modified herein. The reviewer shall assure that the project meets the conditions established in the Conditional Commitment Stage. No substantial deviations from the previously approved design shall be permitted at this stage. Amenities not approved in the initial application may not be added at this stage.
- B. Review and Approval of Drawings. Final working drawings and outline specifications shall be reviewed and approved by HUD. No architects', engineers', or designers' certifications are permitted in lieu of HUD review.

2-10. COST ANALYSIS.

- A. General. Processing primarily involves the confirmation of cost conclusions developed at the Conditional Commitment Stage, if a Conditional Commitment was issued.
1. Where the Owner's Request indicates any change from the previous processing, the Cost Analyst shall reevaluate his/her previous conclusions in the context of the revised Request.
  2. If the Conditional Commitment Stage was bypassed, all procedures and steps required for conditional commitment processing shall be combined with firm commitment processing.
  3. Processing shall be accomplished in accordance with the instructions set forth in Handbook 4450.1, except as modified herein.
- B. Rehabilitation Projects. Upon receipt of the Owner's application, including the detailed work write-up indicating specific items of work to be accomplished and the estimated cost of each item shown by identified units of measurement, e.g., square feet,

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- (2-10) linear feet, fixture, door, window, etc., Form HUD-2554, Supplementary Conditions of the Contract for Construction, and AIA-201, General Conditions to the Construction Contract, for each contract specification, shall be reviewed to assure that all agreements and conclusions reached during Conditional Commitment Stage processing have been taken into account.
1. Any errors, omissions, ambiguities, or other nonconformities must be corrected.
  2. If the Request is consistent with previous determinations, processing will follow outstanding instructions.

2-11. VALUATION ANALYSIS.

- A. General. Valuation processing at this stage will be in accordance with HUD Handbooks 4465.1 and 4480.1, except as modified herein. All processing not completed in previous stages is completed.

- B. Re-analysis of Changes Necessitated by Owner's Actions. If there are design or other changes which may affect estimated operating expenses, the operating expenses must be re-analyzed.

2-12. MORTGAGE CREDIT ANALYSIS.

- A. General. Mortgage Credit processing primarily involves updating conclusions reached at the Conditional Commitment Stage and assuring that the Owner has the ability to close the transaction.
  - 1. Any commitments made by the Sponsor or other parties to provide funds to pay for supportive services, meet the cash requirements or donations of furniture, supplies, equipment, etc., must be secured in writing.
  - 2. If the Conditional Commitment Stage is bypassed, all procedures and steps required for conditional commitment processing shall be combined with firm commitment processing.
  - 3. Processing shall be in accordance with the instructions set forth in Handbook 4470.1, and Handbook 4480.1, except as modified herein.

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- (2-12) B. Review of Owner's Plan to Obtain Services Funding. The MCE must review the evidence of supportive services funding to determine if commitments from outside sources are still available and that they are sufficient to cover the cost of supportive services. If, as a condition of approval of the capital advance at the Conditional Commitment Stage, the Owner was required to furnish further evidence of commitments from outside funding sources (due to reduction or withdrawal of original commitments) or of its own capacity to pay for the supportive services, the MCE must review the documentation submitted to determine that the project is still feasible. If the evidence submitted is unacceptable, the MCE shall advise the MHR. Unless adequate documentation in this area is submitted, the project must be rejected by Mortgage Credit.

2-13. FAIR HOUSING AND EQUAL OPPORTUNITY REVIEW.

FHEO review involves primarily updating conclusions reached at the Conditional Commitment Stage. Furthermore,

FHEO will review the Special Conditions Section of the Firm Commitment to ensure that it contains provisions requiring the Sponsor to carry out Section 3 and the pursuant regulations.

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Section 3 - Preparing and Issuing Commitment

2-14. HOUSING DEVELOPMENT DIRECTOR'S FUNCTION

- A. Reviews acceptability of underwriting and program conclusions.
- B. Amends or modifies conclusions as necessary, if properly documented.
- C. Signs Form HUD-92264 if in agreement with conclusions reached.
- D. Directs the preparation of Form HUD-92438, Underwriting Summary Report.
- E. Forwards Forms HUD-92264, HUD-92438 and any related memoranda to MHR for preparation of Firm Commitment (Commitment for Capital Advance Financing).

2-15. AMENDMENT OF CAPITAL ADVANCE RESERVATION

A. Decreases

If the Owner qualifies for sharing in cost savings, the fund reservation will not be reduced until the cost savings determination is made after cost certification. If not, the reservation will be reduced to the amount of the approved capital advance.

B. Increases

- 1. Will be requested per Subparagraph 1-70.A of this Handbook.
- 2. If approved:
  - a. Headquarters will issue a Form-185, Regional Fund and Contract Authority Assignment.
  - b. The Regional Office, after verification of funds by RAD and signature by the Regional Administrator or his/her designee, will issue a Form HUD-185.1, Regional Fund and

Contract Authority Subassignment, to the  
Field Office.

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(2-15) c. Upon receipt of funds, the MHR must prepare a revised Form HUD-718 per Paragraph 3-59 of Handbook 4571.2.

2-16. PREPARATION OF CAPITAL ADVANCE AGREEMENT AND COMMITMENT FOR CAPITAL ADVANCE FINANCING, FORM HUD-92432-CA (FIRM COMMITMENT).

The MHR shall prepare the Capital Advance Agreement and Firm Commitment in accordance with the data included on Forms HUD-92438, 92264 and 92264-A.

2-17. PREPARATION AND APPROVAL OF THE AGREEMENT TO ENTER INTO A PROJECT RENTAL ASSISTANCE CONTRACT (AGREEMENT), FORMS HUD-0172A-CA (PART 1) AND HUD-90172B-CA (PART 2) and HUD-90167-CA, CAPITAL ADVANCE AGREEMENT.

The MHR will prepare the Agreement and forward to Field Office Counsel for review. Upon approval, PC&R shall send an original and two copies of the

- Agreement, and
- Capital Advance Agreement (with review by Mortgage Credit)

to the Owner, with the Firm Commitment for the Owner's signature.

The Project Rental Assistance Contract (PRAC), Forms HUD-90173A-CA (Part 1) and HUD-90173B-CA (Part 2), must be completed and included as an addendum to the Agreement.

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#### Section 4 - Actions Prior to Initial Closing

2-18. GENERAL. This Section covers those actions required to be taken by the Field Office staff and the Owner after issuance of the firm commitment and precedent to initial closing and initial disbursement of capital advance

proceeds.

2-19. EXECUTION OF AGREEMENT TO ENTER INTO PROJECT RENTAL ASSISTANCE PAYMENT CONTRACT (AGREEMENT).

The Owner shall:

- execute all copies of the Agreement and return them to the Field Office prior to the scheduled initial closing.

Upon receipt of the Agreement, the Chief Counsel shall:

- review for legal sufficiency and approve it for execution by the Housing Director.

After the Housing Director executes the Agreement, the PC&R staff shall:

- retain one fully executed copy to be given to the Owner at initial closing,
- retain two copies for its records, and
- notify the HM Division of execution.

2-20. NOTIFICATION OF PROPERTY INSURANCE REQUIREMENTS. The Manager shall notify the Owner of the property insurance requirements by providing a copy of Form HUD-90164-CA, Property Insurance Requirements. Attach thereto the Form HUD-92329, Property Insurance Schedule, which the Cost Analyst has completed. The Owner should be notified that evidence in the form of certified duplicate copies must be furnished at the time of the initial closing.

2-21. EXECUTION OF CAPITAL ADVANCE AGREEMENT.

- A. Upon receipt of the Capital Advance Agreement, Form HUD-90167-CA, from HUD, the Owner shall review and execute all copies and return them to the Field Office prior to the scheduled initial closing.

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(2-21) B. The Area Counsel shall review the executed copies and, if in order, transmit to the Manager for execution.

C. After full execution, the Capital Advance Agreement shall be distributed as follows:

1. Original copy, Regional Accounting Division

NOTE: This copy must be furnished prior to processing the first requisition.

2. Fully Executed copy, Field Office Docket
3. Fully Executed copy, Owner
4. Conformed copy, Office of Elderly and Assisted Housing, HMEH
5. Conformed copy, Area Counsel Docket
6. Conformed copy, Mortgage Credit Staff

2-22. PREPARING FOR INITIAL DISBURSEMENT OF CAPITAL ADVANCE FUNDS.

- A. The MHR shall provide the Owner copies of the Form HUD-92403-CA, Requisition for Disbursement of Capital Advance Funds, and supporting forms, together with copies of SF-1199A, Direct Deposit Sign-up Form, with instructions for completing and submitting to the Field Office.
- B. The MCE shall prepare Form FHA-2283, Financial Requirements for Closing.
- C. The Owner shall be advised that the forms and two copies of all draft closing exhibits described in Appendix 9 of this Handbook must be submitted at least 15 working days prior to the scheduled initial closing in order to permit sufficient time for processing the requisition and delivery of the check to the Field Office.
- D. Upon receipt of Form HUD-92403-CA (with supporting documentation), SF-1199A, and the draft copies of the closing exhibits, the MHR shall forward one copy of the draft closing exhibits and all copies of Form HUD-92403-CA and SF-1199A to Mortgage Credit for review

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(2-22) and approval. The remaining copies of the draft closing exhibits shall be sent to the Area Counsel for review.

- E. Mortgage Credit Review. The MCE shall review:
  1. SF-1199A to determine that the depository is

acceptable.

2. Form HUD-92403-CA and all accompanying bills and receipts using procedures outlined in Handbook 4470.1 as a guide. No item shall be recommended for payment unless appropriate supporting documentation is received.
3. The draft closing exhibits.

NOTE: Any last minute changes to closing documents must be sent to Mortgage Credit for review.

- F. The approved Form HUD-92403-CA and executed SF-1199A shall be transmitted to the Regional Accounting Division, specifying that the Treasury check be dated as of the date of the initial closing. Sufficient time (approximately 20 working days) should be allowed for the check to be delivered to the Field Office by the scheduled closing date. To facilitate all disbursements, documentation relating to the disbursements should be handcarried, where possible.
- G. In the event it becomes necessary to cancel or reschedule the initial closing, the Field Office should determine whether the time delay is sufficient to warrant cancelling the request for the check or, if the check has already been received, forwarding it to the RAD for return to the Treasury.

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Section 5 - Award of Construction Contract  
And Pre-Construction Conference

- 2-23. GENERAL. Even though the Federal Procurement Regulations do not apply, contract award based on competitive bidding is appropriate and encouraged for all projects. If the sealed-bid approach is not used, Owners are still encouraged to solicit proposals from several contractors, rather than dealing with only one.
- 2-24. SECTION 3 APPLICABILITY. Regardless of the method used to obtain a contractor, the following language shall be included in the contract documents:

"The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the

requirements of Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, contracts will be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the same metropolitan area (or nonmetropolitan county) as the project. If training and employment opportunities arise, they will be given, to the greatest extent possible, to lower-income persons residing within the unit of local government or metropolitan area (or nonmetropolitan county) in which the project is located."

The FHEO staff shall review the proposed contractor(s)' Section 3 utilization goals and affirmative action plans to determine whether the plans proposed will accomplish the stated goals.

2-25. FORM OF CONSTRUCTION CONTRACT.

Form HUD-92442A-CA, Construction Contract-Cost Plus, shall be used in all instances where the bidding procedures outlined below are not used. Reimbursement for costs, plus a fixed fee, the total of which shall not exceed a stipulated amount, shall be defined in the completed contract. Form HUD-92442-CA, Construction Contract-Lump Sum, shall be used for competitively bid projects.

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- 2-26. ARCHITECT'S ADDITIONAL SERVICES FOR COMPETITIVELY BID PROJECTS. The project Architect shall furnish the construction cost estimates for firm commitment application, prepare the Project Manual, advertise for bids, issue bid documents to prospective bidders and plan reading rooms, receive and publicly read bids, tabulate and evaluate bids, and advise the Owner on contract awards.
- A. Ambiguities. The drawings and specifications shall be prepared with a view of leaving no ambiguities and permitting all bidders to bid on an equal footing.
  - B. Proprietary Building Systems. The Architect may specify a proprietary building system which incorporates innovative technology. In such event the Architect shall prepare plans and specifications for an alternate system of construction which can be competitively bid. The plans and specifications for the proprietary system and its alternate must be equal in their general and detailed scope, and the bidding

documents must provide that the Owner will accept the lowest bid.

2-27. ESTIMATE OF CONSTRUCTION COST.

- A. Detailed Cost Estimate must include all work specified for construction - - identifying the material quantities for each phase of work, cost of materials, and cost of labor separated into the 16 divisions of the Uniform System for Specifications.
  - 1. Cost estimates provided by a commercial service acceptable to the HUD Field Office may be used.
  - 2. Off-site work must be separately identified.
- B. Form HUD-2328, Contractor's and/or Mortgagor's Cost Breakdown, shall be completed by the Architect, using the detailed estimate. If the project has more than one structure type, a Form HUD-2328 shall be completed for each and a summary Form HUD-2328 for all construction work.
- C. Cost Estimate Projections shall be to the anticipated contract execution date in the project development schedule. Generally the contract execution date should be not later than five months after the application for Firm Commitment has been submitted.

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2-28. PROJECT MANUAL. The project manual is an expansion of the technical specifications. It covers the form of bidding documents and the requirements governing activities which take place before the execution of the construction contract, and the form of construction contract documents (except drawings) which constitute the contract between the Owner and contractor. The project manual shall include the following documents:

- A. Sequence of Documents. Title page; Table of Contents; Invitation for Bids; Instructions to Bidders; Form of Bid Guarantee; Form of Affidavit of Non-Collusion/Non-Identity of Interest; Form of Previous Participation Certificate; Form of Contract Assurance; other sample Forms (Contract Documents); Form of Construction Contract; General Conditions; Supplemental Conditions; Special Conditions; Davis-Bacon Wage Decision applicable to the project; and Technical Specifications.

- B. Addenda are also part of the contract, but are separated from other documents in the project manual because they are issued after the Invitation for Bids.

2-29. FORM OF PROJECT MANUAL DOCUMENTS. The project manual shall be prepared using the following forms, specimen forms and criteria. Where specimen forms are modified because of local practice, they shall incorporate the listed mandatory information and be reviewed by Chief Counsel.

A. Title Page. The title page shall include the:

1. Project number and name
2. Community or project location
3. Architect's name, business address and phone number
4. Owner's name, business address and phone number

B. Table of Contents. The table of contents shall index the bidding of contract documents bound into the project manual, including the technical specifications sections and list of project drawings numbered and dated. Provisions shall be made for indexing addenda in case any are issued during the bidding period.

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(2-29) C. Invitation for Bids. Appendix 10 provides a specimen form of Invitation for Bids which may be modified to conform with local practices. Any Invitation for Bid shall include all of the following:

1. Name of the Owner.
2. Brief construction contract description, which shall always be a "single firm fixed-price contract."
3. Brief project description to include:
  - a. Project name
  - b. Project location (i.e., community or city and State)
  - c. Scope (e.g., general construction for 24 dwelling units, including appurtenant

structures, landscaping and drainage ditch improvements)

- d. Type of construction (e.g., rehabilitation of an elevator structure).
4. Estimate of Cost. Stated in terms of an approximate value of work. Rounding to a general figure within 10 percent of the estimated cost is acceptable, provided a contract would be awarded if bids were submitted in the stated amount.
5. Place and time for receiving and publicly opening bids.
6. Location where bid and contract documents are on file and may be obtained on payment of a specified returnable deposit.
7. The requirement for a bid guarantee, in the form of a certified check or bank draft of satisfactory bid bond for 5 percent of the bid, to be submitted with the bid.
8. The requirement for assurance of completion which shall be in the form and amount specified in the Regulations.

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- (2-29) 9. Statement that the Owner reserves the right to reject any or all bids and waive any informality.
- D. Instruction to Bidders. AIA Document A701, Instruction to Bidders, and Appendix 11, Supplement to AIA Document A701, Instruction to Bidders for Section 811 Projects.
  - E. Bid Form. Appendix 12, Form of Bid, provides a specimen bid form which may be modified to comply with local practices. Any form of Bid must include:
    1. Project name.
    2. Bidder's name and address.
    3. A statement that the Bidder proposes to furnish all labor, materials, equipment and services required to construct and complete the project, as described in the Invitation for Bids (including the contents of all documents on

file), for a specified lump-sum price.

4. Bid Guarantee, (i.e., certified check, bank draft or bid bond equal to 5 percent of the bid).
5. A statement of the period after the bid opening during which bid shall not be withdrawn without consent of Owner.
6. A statement that Bidder shall, if notified of bid acceptance, execute a contract in the prescribed form and furnish the required assurance of completion at the HUD office \_\_\_(address)\_\_\_ at the date and time specified in the notification of bid acceptance. The date shall be no earlier than 10 days after notification of acceptance, nor later than the date stated in the Invitation for Bids, except by mutual consent of Bidder and Owner.
7. Bidder acknowledgement of amendments (addenda) to the Invitation Bids.
8. Bidder certification that the bid is in strict accord with all terms of the Invitation for Bids (including the contents of all documents on file) and that the bid is signed by a person authorized

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(2-29) to bind the Bidder.

F. Bid Guarantee.

1. The bid guarantee must be furnished with the bid in an amount equal to 5 percent of the bid and in the form of:
  - a. a certified check or bank draft made payable to the Owner; or
  - b. a satisfactory bid bond underwritten by an acceptable guaranty or surety company listed in the U.S. Treasury Department Circular No. 570.
2. Form of Bid Bond shall be AIA Document A310, Bid Bonds.
3. Power of Attorney for the person signing for surety in the project area must be attached to

the bond.

4. Duration of Bid Bond shall be specified as 60 days, unless a shorter bid holding period is contemplated under special circumstances.
- G. Form for Non-collusive/Non-Identity of Interest Affidavit. Appendix 13 is a sample form for Non-Collusive/Non-Identity of Interest Affidavit.
- H. Previous Participation Certificate, Form HUD-2530.
- I. Contract Assurance Form. Contract assurance may be in the form of:
1. Performance/Payment Bond (Dual Obligee), Form HUD-92452-CA, OR
  2. Performance Bond, Form FHA-2452, and Payment Bond, Form HUD-92452A, OR,
  3. Cash escrow, using Form HUD-92450-CA, Completion Assurance Agreement.

These forms shall be included in the Project Manual.

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- (2-29) J. Contract Form. Form HUD-92442-CA, Construction Contract-Lump Sum.
- K. General Conditions. AIA Document A201, General Conditions of the Construction Contract.
- L. Supplemental Conditions. Form HUD-2554, Supplementary Conditions of the Contract for Construction.
- M. Special Conditions.
1. Substitutions in the specified work shall be covered by the following statement in the Special Conditions: "Material and Workmanship. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article or process, which, in the judgment of the Architect, is equal to that named. The Contractor shall

furnish to the Architect, for approval, the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When required by its contract or when called for by the Architect, the Contractor shall furnish the Architect, for approval, full information he/she contemplates incorporating into the work. When directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection. The form of Architect's approval shall be by AIA Document G710, Architect's Supplemental Instructions."

2. The Special Conditions shall contain no statement which conflicts with the General Conditions. If a conflict does occur, the General Conditions shall govern.

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(2-29) N. Davis-Bacon Wage Determination. Unless the project is exempt (has less than 12 assisted units or is a group home) from Davis-Bacon requirements, the appropriate wage determination for the project shall be made a part of the Project Manual. Since the Department of Labor wage determination may be effective for only 180 days from the date of such determination, the Architect must identify the anticipated date for execution of the contract to assure that wage rates in the Project Manual are valid on the date of contract execution.

1. "All actions modifying a project wage determination received by the agency (HUD) before contract award (or the start of construction where there is no contract award) shall be effective except as follows: ... In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency (HUD) less than 10 days before the opening of bids shall be effective unless the agency (HUD) finds that there is not a reasonable time still available before bid opening, to notify Bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the

Administrator (Department of Labor) upon request.  
No such report shall be required if the  
modification is received after bid opening. " 29  
CFR Section 1.6(c) (2) (i) (emphasis added) .

2. If the contract has not been awarded within 90 days after bid opening, any wage changes published in the Federal Register prior to the award of the contract shall be effective with respect to the contract unless HUD requests and obtains an extension of the 90-day period from the U.S. Department of Labor.
  3. Because of these requirements it is incumbent upon the Field Office to immediately notify the Architect of any changes in the wage determination.
- O. Technical Specifications. The specifications shall fully define the scope of construction or rehabilitation, and establish the quality of materials and workmanship. The specifications may be written in "performance" or "prescriptive" language. Special attention must be given to the following in order to

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- (2-29) promote competition, avoid ambiguities, and minimize contract disputes.
1. Completeness. Each section of work must include the "scope of work," "workmanship," and "materials."
    - a. Equipment may be specified by manufacturer and grade or model designation, or in performance terms. Where specified by manufacturer, three or more comparable products should be identified where practicable.
    - b. Building Materials may be specified as meeting the industry accepted test control standard for basic classifications of materials, where it is customary and desirable. Brand names and comparables need not be identified for basic materials classifications specified by the industry norm.
  2. Ambiguities. General references to the Codes,

MPS, UM Bulletins, and Material Releases are unacceptable. The Architect shall define project work in detail specifying that which is most suitable for the project.

3. Substitutions. The Instructions to Bidders and Special Conditions shall provide for Architect-approved substitutions, where the contractor wishes to use an alternative to the equipment, material, article, etc., specified by trade name, make or catalog. The provisions shall establish the specified items as the standards of quality.
4. Cash and Lump Sum Allowance are not allowed in the specifications, since the contractor's responsibility would be limited to the dollar amount rather than the work required to complete the item.
5. Alternate Bids. Additive alternates shall not be permitted. If deductive alternates are specified, and such alternates are considered in making an award, alternates must be taken consecutively, e.g., 1, 2, 3, not 2, 1, 3.

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- 2-30. INCENTIVE PAYMENT AND ACTUAL DAMAGES. The Owner may offer an incentive payment for early completion of the contract, and shall require payment for actual damages for late completion of the Contract. These shall be defined in the Invitation for Bids and the Form of Contract in the Project Manual.
- A. Entitlement to Incentive Payment. When an incentive payment is offered, it shall be computed as specified in Form HUD-92443-CA, Construction Contract Incentive Payment.
  - B. Actual Damages. A clause requiring payment for actual damages is included in the construction contract should there be a delay in contract completion.
- 2-31. INVITATION FOR BIDS. The Owner shall give full opportunity for open and competitive bidding by publicly advertising for sealed bids for a firm fixed-price contract and additionally soliciting bids from an adequate number of known contractors. The Owner will be responsible for the cost of the advertising which may be recovered from capital advance proceeds (organizational line item).

The Owner must demonstrate a firm commitment to promoting the use of minority business enterprises and women-owned businesses. This commitment can be demonstrated by describing past use of such businesses and/or by setting forth specific affirmative steps the Owner will take to ensure that such businesses have an equal opportunity to compete for and obtain contracts. Affirmative steps may include the steps outlined at 24 CFR 85.36(e) and 570.506(g) (6) but may not include awarding contracts solely or in part on the basis of race or gender.

In addition, the Owner must agree that, to the greatest extent feasible, contracts will be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the same metropolitan area (or nonmetropolitan county) as the project. They also must agree that if training and employment opportunities arise, they will be given, to the greatest extent possible, to lower income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) in which the project is located.

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- (2-31) A. Eligible Bidders. Bidding shall be open to all contractors who furnish the security guaranteeing their bid in an amount equal to 5 percent of the bid in the form of a certified check, bank draft, or bid bond from an acceptable surety listed in the U.S. Treasury Circular 570.
- B. Public Invitation. The Invitation for Bids shall be published at least once a week for two consecutive weeks in local newspapers of general circulation and trade journals, e.g., Dodge Reports.
1. Minority contractors shall be further notified by furnishing a copy of the Invitation to minority media, local community-based groups, and the local association of minority contractors and businesses meeting the criteria of 24 CFR Part 135, Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Projects.
  2. Builder's exchange plan rooms, or similar service organizations nearest the project location, and local chapters of the Associated General Contractors and Associated Builders and Contractors, Inc., shall be given copies of the

Invitation.

3. Copies of the Invitation furnished under Subparagraphs B.1 and B.2 above shall be mailed or otherwise delivered within two business days of the date of the first publication of the Invitation.

C. Solicitation. No fewer than six contractors shall be solicited to bid by mailing or otherwise delivering copies of the public advertisement under appropriate cover to their places of business. Solicitations described in this section shall not be made before the first public advertisement, not later than two business days after the first advertisement. Solicitation does not preclude unsolicited contractors from bidding.

1. List of contractors to be solicited shall be prepared by the Architect and approved by the Owner. The Architect shall ask the local HUD Office for a list of contractors who have

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- (2-31) expressed an interest in bidding or are known to have successfully completed similar work.
2. Selection of contractors to be solicited shall be based on the contractor's ability to construct a project of the type, size, and complexity required; financial capacity; and integrity. In order to determine whether prospective contractors will be responsible individuals or organizations who will honor their legal, financial, and contractual obligations, a previous participation check and review of any adverse information that may otherwise be on file on the contractors will be made by the HUD Field Office. At a minimum, the Field Office's review will include a determination of whether or not the contractors are listed on the Consolidated List of Ineligible Contractors and Grantees.
- D. Bid Period. The Owner shall establish a deadline for acceptance of construction bids which allows enough time for Bidders to evaluate the bid package, estimate project construction costs, and submit their bids.
1. Minimum period shall be for the number of days required but not less than 30 calendar days from

the first publication of the Invitation for Bids.

2. Rebids may have a shortened bidding period appropriate to any changes made in drawings and specifications. Where determined appropriate by the Field Office, rebidding may be solicited directly from those contractors previously submitting bids, and need not be advertised publicly, provided:
  - a. Cost restrictions require only minor revision of plans or specifications to achieve an awardable contract, and
  - b. Competition is assured by the number of contractors previously participating and indicating they are willing to rebid.
3. Bid opening date will be extended if an addendum is issued within four calendar days of the scheduled opening date. In such instances, the bid opening shall be postponed for at least four

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(2-31) calendar days from the date the addendum is published and delivered to the contractors.

- E. Deposits for Bid Package shall be a specific amount consistent with the cost of reproducing a copy of the package and shall be returnable in full for each set returned in good condition within 10 days after bid opening.
  1. Builder exchange plan rooms or similar building service organizations, where subcontractors, material suppliers, and sales agents are accustomed to go for information and take-off quantities, shall not be charged a deposit where not customary.
  2. Deposit checks and drafts shall be made payable to the Owner and credited in the book of accounts for project development if not returned.
- F. Control Record. The Architect shall maintain a record of the bidding documents. This record shall list the following for each individual or firm that requested a bid package:
  1. Bid package control number.

2. Name and address of individual or firm.
3. If applicable, number of addenda and date sent.
4. Amount of deposit and date received, including the
  - a. Date and time bid was received.
  - b. Date individual or firm was notified as to successful low Bidder.

2-32. ADDENDA. Addenda are written or graphic instruments issued during the bidding period which modify or interpret the bidding documents, including drawings and specifications, and become part of the contract documents when the construction contract is executed.

- A. Completion of Drawings and Specifications. Reliance upon addenda for the completion or correction of hastily or poorly prepared documents is unacceptable

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(2-32) and shall not be tolerated.

- B. Changes to Bid Documents consisting of the Project Manual and Drawings shall be made by addenda.
- C. Interpretations. The bid documents are not to be interpreted by the Owner or Architect except by addenda. HUD staff shall refer all requests for interpretation of bid documents to the Architect.
- D. Identification and Distribution. Each addendum shall be numbered sequentially and a copy given to: each Bidder of record; each place where bidding documents are on file; and to the HUD Field Office. Delivery shall be by return-receipt registered mail or service for which receipt is documented by receiver's signature.
- E. HUD Review. Addenda should be post reviewed rather than prereviewed by HUD to save time and because most will be clarifications rather than substantive modifications. However, any addendum determined inappropriate by HUD shall be revised by a subsequent addendum.
- F. Revised Deadline. Each addendum shall state whether

it extends the deadline date and/or time or leaves them unchanged.

- 2-33. BID OPENING. Bids shall not be opened until the date and time specified in the Invitation for Bids. Upon receipt of each bid (including late bids), the Architect shall mark the envelope with the date and time of receipt and the Architect's initials, then shall store it in a locked bid box, cabinet or safe until the designated bid opening time. The bids shall be opened in public and read aloud at the specified time and place by the Architect. The minimum information recorded in the Bid Tabulation shall be as required in Paragraph 2-39 below.

Bids received after the date and time specified in the Invitation for Bids shall not be opened, but shall be returned to the Bidder with a letter indicating that the bid was not received by the deadline. An architectural representative of the HUD Field Office shall be present as an observer at the bid opening and shall file a memorandum:

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- (2-33) - identifying the place and time bid opening began and late bids received;
- indicating by Bidder erroneous bids or requests for bid withdrawal;
  - tabulation of bid;
  - apparent low Bidder; and
  - time bid opening ended.
- 2-34. LOW BIDDER. The low Bidder shall be determined the lowest responsible Bidder if the Bidder:
- A. was responsive to the Invitation for Bids and properly completed the required submission,
  - B. meets the requirements prescribed by HUD's Previous Participation Certificate, Form HUD-2530, and HUD review,
  - C. is not listed in the "Lists of Parties Excluded from Federal Procurement and Non-Procurement Programs" issued by GSA,
  - D. provides the prescribed bid guarantees.

2-35. BID WITHDRAWAL OR REJECTION. After the bid opening, the Owner shall not reject or disqualify any Bidder or allow any Bidder to withdraw a bid without the prior written approval from the HUD Field Office.

A. Disqualification of Low Bidder.

1. If the Owner has evidence that the low Bidder is not a responsible contractor who can perform successfully under the terms and conditions of the proposed contract, the Owner shall submit a recommendation and supporting documentation to HUD for review as part of the contractor's previous participation clearance. The Owner's submission would be based on such consideration as:

- contractor integrity;
- compliance with public policy;

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- (2-35)
- record of past performance; and
  - financial and technical resources.
2. If the Owner recommends rejection of the lowest Bidder, the Owner shall notify the Bidder of the reasons and provide the Bidder an opportunity to submit supporting evidence as to why the bid should not be rejected. The Owner's documentation for rejection shall include the following for review and approval by HUD.
- a. A copy of the Owner's letter telling the Bidder why disqualification is recommended, and inviting the Bidder to reply within 5 working days.
  - b. The Bidder's written reply explaining why the Bidder should not be disqualified.
  - c. A letter from the Owner stating its objections to the low Bidder and its recommendation for an alternate award. The letter shall address any statements made by the low Bidder in support of an award to it.
3. HUD shall consider the Owner's recommendations

and supporting documents during previous participation clearance and review of Form HUD-2530.

- B. Withdrawal Due to Error. If a Bidder seeks to withdraw a bid before the end of the bid holding period or the execution of the construction contract, the Owner shall submit the following for review and approval by the HUD Field Office.
1. A notarized statement from the Bidder that an error was made with an explanation of how it occurred.
  2. A copy of the Bidder's cost estimate worksheets or other evidence provided by the Bidder in support of the withdrawal request.
  3. A letter from the Owner to the HUD Field Office recommending approval or disapproval, including the reasons, of the Bidder's withdrawal request.

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- (2-35) C. Bidder Notification. Upon receipt of HUD's decision, the Owner shall notify the Bidder. If authorized by the Field Office, the Owner shall also return the bid guarantee to the Bidder.
- D. Default of Low Bidder. If the low Bidder fails to produce acceptable Performance and Payment Bond(s) or other prescribed form of surety, or refuses to accept the award of contract without acceptable verified justification, the Owner shall declare the bid guarantee forfeited. If such guarantee is in the form of a bond, the Owner shall notify the bonding company immediately.
1. Care shall be taken not to reject the bid, since such actions would cancel the bid guarantee and prevent recovery.
  2. The amount recovered should equal at least the difference between the defaulted bid and the next lowest acceptable bid, or the amount by which the bid accepted following readvertising exceeds the defaulted bid.
  3. The bid guarantee amount recovered shall be applied to the capital advance amount.
- E. Rejection of All Bids. The Owner may recommend and/or

HUD may require, rejection of all bids because bids received are too high or for other justifiable causes. The Owner shall first obtain written authorization from the Field Office Manager. The Owner, Architect and Field Office staff shall review the bids to evaluate the reason why a construction contract cannot be awarded. The review shall determine whether the bid amount would:

1. cause cost limits to be exceeded,
2. exceed the construction budget,
3. indicate that the project is overdesigned,
4. indicate unreasonably high costs due to unusual circumstances temporarily affecting construction in the area, or

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- (2-35) 5. the bid cannot be accepted for other identified causes.
- F. HUD Cost Limits. If the cost limits or construction budget are incorrect, the Field Office shall promptly correct them before the bidding period expires.
- G. Exceeding Cost Limits. If the bids exceed the cost limits, the Owner may choose to pay for the excess cost or the project may be redesigned and rebid.
- H. Readvertisement for Bids. Upon approval of the revised construction documents, and reissuance of the firm commitment by the field, the Owner shall be authorized to issue a new Invitation for Bids.
- 2-36. BID PROTESTS. Any protest filed with the Field Office arising from the award or proposed award of a contract which cannot be resolved shall be referred to the Regional Administrator for resolution. In rendering a decision, the Regional Administrator shall be guided by State or local contracting procedures and precedents or cases decided under the Uniform Commercial Code. The Regional Administrator shall render his/her decision promptly and shall file a copy of the decision with the Assistant Secretary for Housing. Any appeal of the Regional Administrator's decision shall be made to the Assistant Secretary.
- 2-37. OWNER'S SUBMISSION OF PROPOSED CONTRACT AWARD DOCUMENTS.

As soon as possible, but not more than 10 working days after bid opening, the Owner shall send the following documents as well as any other pertinent information for Field Office approval of the contract award.

- A. Bid Tabulation shall identify the following for each bid received:
  - 1. name and address of Bidder,
  - 2. amount of bid, and
  - 3. amount and type of bid guarantee.
  
- B. Proposed Bid. A letter from the Owner to the Office Manager advising of the bid (by Bidder name and bid amount) recommended for award of contract. A conformed copy of the bid, including Non-Collusive/

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(2-37) Non-Identity of Interest Affidavit, and Form HUD-2530 are to be included with the letter. The Owner's submission shall also include the following, as applicable:

- 1. If the Owner proposes to accept other than the lowest bid, a copy of the Owner's and contractor's letters and statement pursuant to Paragraph 2-35.
- 2. Consistent with the Owner's Invitation for Bids and bid package, including any addenda, previously approved by the Field Office.
- 3. In an amount consistent with the construction budget.

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

- C. Valuation Branch shall complete Section G, Form HUD-92264, reflecting the actual bid amount.
- D. Mortgage Credit Section shall complete processing of Form HUD-92264A.
- E. Director of Development shall:
  - 1. Coordinate the contract award document review,

and forward the documents and revised Forms HUD-92264 and Firm Commitment to the Field Office Counsel for use in the Initial Closing.

2. Advise the Owner in writing of HUD's approval of its recommendation for contract award; send the Owner a revised Firm Commitment if necessary; and provide instructions for:
  - a. Execution of contract documents.
  - b. Initial Closing.
  - c. Date of pre-construction conference.
3. If the lowest responsible bid is too high to permit award of a construction contract, the Owner shall be advised to meet with the Architect

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- (2-37) and the Chief of A&E Section to review the project for possible cost reduction.
- a. If a reduction in cost by less than half a percent of the bid and less than half the difference between the lowest and next lowest bid would result in an acceptable mortgage amount and is otherwise satisfactory to the Owner, Bidder and HUD, a deductive change order reducing project requirements and cost shall be drafted (and appropriate supporting exhibits prepared) for concurrent execution with the contract.
  - b. If a redesign is required, the Director of Development shall identify its extent and establish a schedule for completing work and readvertising.
  - c. If the project cost limits or construction budget are incorrect, they shall be corrected.
  - d. If more time is required for revisions or corrections, the Owner shall be advised to secure from the apparent low responsible Bidder an extension of the bid holding period.

2-38. CONTRACT AWARD. Upon receipt of the letter of instruction

for execution of the construction contract from the Director of Development, the Owner shall send the successful Bidder a registered letter stating:

- A. Date and Time scheduled for execution of the construction contract at the HUD Field Office.
- B. Form HUD-2328, Contractor's and/or Mortgagor's Cost Breakdown, shall be submitted within 5 days of this notification and that it shall satisfy General Conditions requirement for a schedule of values.
- C. Performance/Payment Bond or Payment Bond and Performance Bond issued by a firm listed in the U.S. Treasury Department Circular No. 570, or cash escrow specified in the Instructions to Bidders, shall be presented at or before contract execution.

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- (2-38) D. Power of Attorney shall be provided with the bond(s), and the bonds shall be dated no earlier than construction contract execution.
- 2-39. DEPARTMENT OF LABOR NOTIFICATION. Within 10 calendar days of contract award (including subcontracts) for each construction contract of \$10,000 or more, the Director of Development shall send a notice of contract award to the Regional Office of Federal Contract Compliance Programs of the Department of Labor. This notification is required by Executive Order 11246 and shall include:
- the name, address, and telephone number of the contractor,
  - the employer identification number,
  - the dollar amount of the contract,
  - the estimated construction start and completion dates, and
  - the project number and community in which the project is being built.
- 2-40. PRE-CONSTRUCTION CONFERENCE. A pre-construction conference shall be held prior to the initial closing, at which time labor standards, prevailing wage and cost certification procedures, HUD's equal employment policy, and how advances and changes orders will be handled, shall be outlined.

- A. The Housing Director must read and explain Form HUD-2554, Supplementary Conditions of the Contract for Construction. This form sets forth the pertinent obligations which are assumed by a contractor or subcontractor performing under a covered contract, as well as a statement of the sanctions that may be applied in the event of noncompliance. A copy of Form HUD-2554 is to be made part of all contracts entered into with a subcontractor. Each contractor should be given additional copies to pass on to any subcontractors not present.
- B. FHEO Staff, as directed by the Regional Administrator/Manager, may participate in the preconstruction conference to provide guidance on equal opportunity requirements, as follows:

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- (2-40)
1. Ensure that the construction contract contains the appropriate reference to Executive Order 11246.
  2. Advise contractors of the appropriate Office of Federal Contract Compliance Program (OFCCP) offices where Executive Order (EO) 11246 advice and assistance can be obtained.
  3. Advise Owners/general contractors of Federal and HUD policy supporting and encouraging the utilization of MBEs and WBEs as subcontractors and suppliers.
  4. Explain the mandatory provisions of the EEO provisions of EO 11246 and those of a voluntary and cooperative nature in EOs 11625, 12432 and 12138 governing Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) participation in Federally-funded and assisted programs.
  5. Advise of Section 3 requirements, HUD's Minority Business Goals and Minority Bank Deposit Program.
- C. Copies of the Equal Opportunity Poster will be given to the contractors and subcontractors present. Each contractor and subcontractor must agree to put these posters in conspicuous places available to employees and applicants for employment. Additional copies of the poster will be furnished each general contractor

and to any subcontractors not present.

- D. Commencement of Construction. Construction must not commence before formal closing and recordation of the mortgage. No "early start" approvals will be granted.