



# **Contractor's Guide**

*April 2022*





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## Table of Contents

<b>Chapter 1 – Overview .....</b>	<b>4</b>
<b>Chapter 2 – Contractor Selection/Bidding Requirements/ Compensation .....</b>	<b>5</b>
2.01 Purpose.....	5
2.02 Requirements.....	5
2.03 Prevailing Wage .....	7
<b>Chapter 3 – Insurance Requirements .....</b>	<b>9</b>
<b>Chapter 4 – Owner-Contractor Agreement.....</b>	<b>10</b>
4.01 Purpose.....	10
4.02 Requirements.....	10
<b>Chapter 5 – Contractor’s Surety .....</b>	<b>12</b>
5.01 Purpose.....	12
5.02 Requirements.....	12
<b>Chapter 6 – Contractor’s Role Overview.....</b>	<b>13</b>
<b>Chapter 7 – Formal Application.....</b>	<b>14</b>
7.01 Purpose.....	14
7.02 Contractor’s Role .....	14
7.03 Acceptance for Processing.....	14
<b>Chapter 8 – Project Launch Meeting .....</b>	<b>15</b>
8.01 Purpose.....	15
8.02 Contractor’s Role .....	15
<b>Chapter 9 – Determining Feasibility .....</b>	<b>17</b>
9.01 Purpose.....	17
9.02 Contractor’s Role .....	17
<b>Chapter 10 – Loan Commitment.....</b>	<b>18</b>
10.01 Purpose.....	18
10.02 Contractor’s Role .....	18
<b>Chapter 11 – Loan Closing.....</b>	<b>20</b>
11.01 Purpose.....	20
11.02 Contractor’s Role .....	20
<b>Chapter 12 – Construction Phase .....</b>	<b>23</b>
12.01 Purpose.....	23
12.02 Contractor’s Role .....	23
<b>Chapter 13 – End of Construction.....</b>	<b>26</b>
13.01 Purpose.....	26
13.02 Contractor’s Role .....	26
13.03 Identity of Interest – Construction Cost Certification .....	27

**Chapter 14 – Warranty Period.....28**  
    14.01 *Purpose*..... 28  
    14.02 *Contractor’s Role* ..... 28

**Chapter 15 – Fair Housing Policy .....29**

**Chapter 16 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and  
Disclosure and Reporting .....31**  
    16.01 *Fraud*..... 31  
    16.02 *Misuse of Funds*..... 31  
    16.03 *Conflict of Interest* ..... 31  
    16.04 *Suspension* ..... 32  
    16.05 *Disclosure and Reporting*..... 32

**NOTE:** Many of the Minnesota Housing forms referenced in this document can be located in the list of [Post Selection Materials for Owners and Developers](#) on Minnesota Housing’s website at [www.mnhousing.gov](http://www.mnhousing.gov).

## Chapter 1 – Overview

The Contractor’s Guide provides assistance to owners/developers/borrowers (owners) and contractors in understanding the contractor’s role in the Minnesota Housing Finance Agency (Minnesota Housing) development process. Minnesota Housing’s development process consists of the following phases: Formal Application, Project Launch Meeting, Determining Feasibility, Loan Commitment, Loan Closing, Construction Phase, End of Construction, and Warranty Period.

Factors that may have an impact on the development process include:

- Minnesota Housing construction loan vs. end loan
- Minnesota Housing acting as non-lead lender vs. lead lender

In addition, this guide contains information regarding reasonable compensation for construction related services and describes requirements associated with construction related insurance, contractor surety, contract compliance, and the Owner-Contractor Agreement.

The contractor may be selected via negotiated bid or competitive bid process. The contractor, if selected via negotiated bid, is more likely to play a more active role in the earlier stages of the development process.

Regardless of what stage in the development process the contractor is selected, the owner and selected contractor must become familiar with all the information contained and/or referenced in this guide prior to executing the Owner-Contractor Agreement.

## Chapter 2 – Contractor Selection/Bidding Requirements/ Compensation

The construction process begins with bidding or negotiating contracts with those who will build the proposed site improvements. Minnesota Housing permits either direct selection (negotiated or comparative selection) or competitive bidding for awarding construction contracts. Each selection method has its advantages and disadvantages. Regardless of what selection method is used, selection of a contractor (single prime general contractor) who has the capabilities and qualifications to meet the project’s requirements is the owner’s responsibility.

Construction management, construction coordination, owner construction representative services, or other similar services in addition to or outside the single, prime general contractor construction contract must not be considered construction costs. The costs or fees for said additional services, if approved by Minnesota Housing, must be included in the developer fee or some other development cost determined by Minnesota Housing.

Minnesota Housing realizes the importance of contractors receiving adequate compensation for construction services. In addition, Minnesota Housing realizes not every project is the same, and there are often projects that are inherently complicated and characterized by uncertainties. Therefore, contractor compensation may exceed the maximum percentage allowed (refer below), if approved by Minnesota Housing.

### 2.01 Purpose

The purpose of contractor selection/bidding requirements/compensation is to provide a framework for contractor selection.

### 2.02 Requirements

1. If contractor selection is through direct selection:
  - a. It must be done early in the development process to establish the contractor as part of the design team, and the contractor must be expected to provide continuous value engineering in design.
  - b. An attempt to competitively bid all work to at least three (3) qualified subcontractors must be made; however, at a minimum, all work must be competitively bid to at least two (2) qualified subcontractors for each division of work, including work to be performed by the general contractor’s own workforce.
2. Contractor compensation must comply with the following:
  - a. Contractor profit: The maximum contractor profit is 6% of net construction costs.  
**NOTE:** Net construction costs are construction costs (schedule of value line items) not including contractor profit, general requirements, and contractor overhead.

- b. General requirements (conditions): The maximum allowed is 6%. Items of costs to be considered in this allowance include: onsite supervision, construction site signs, field office expenses, temporary sheds and toilets, temporary utilities, equipment rental, routine general cleanup during construction, rubbish removal, dumpsters, construction material recycling, watchmen wages, all of the builder's insurance (except builder's risk), temporary walkways, fences, roads, and other similar expenses.
- c. Contractor overhead: Minnesota Housing allows a contractor an overhead allowance based on a percentage of the net construction cost. Preconstruction services and cost estimating must be considered contractor overhead. The permitted maximum allowance is 2%.
- d. It is possible to exceed expenses in one area if other areas are not at their maximum. Minnesota Housing will allow the collective balance of contractor profit, general requirements, and contractor overhead to equal 14%.
- e. The following construction costs may be schedule of value line items outside of and in addition to the profit, general conditions, and overhead, if approved by Minnesota Housing.
  - i. Extra expenses due to unique weather conditions such as winter heat, frost stripping, construction dehumidification, or de-watering
  - ii. Cost for a project-specific, third-party data cloud storage service
- f. The cost of and contract for Special Inspections cannot be included under the construction contract.
- g. Identity of Interest
  - i. An identity of interest exists between the owner and the contractor when:
    - 1. There is any financial interest of the owner in the contractor or any financial interest of the contractor in the owner.
    - 2. Any officer, director, or stockholder or partner of the owner is also an officer, director or stockholder or partner of the contractor.
    - 3. Any officer, director, stockholder, or partner of the owner has any financial interest in the contractor; or any officer, director, stockholder, or partner of the contractor has any financial interest in the owner.
    - 4. The contractor advances any funds to the owner.
    - 5. The contractor takes stock or any interest in the owner entity as consideration of payment.
    - 6. Any relationship (e.g. family) existing that would give the owner or contractor control or influence over the price of the contract or the price paid to the subcontractor, material supplier, or lessor of equipment.
  - ii. When the owner and the contractor have an identity of interest, in addition to the fee limits stated above, the combined sum of developer fee, contractor profit,



contractor overhead and general requirements may not exceed 20% of the total development costs, less the developer fee.

- iii. The contractor must submit a Contractor’s Certificate of Actual Cost HUD Form 92330A audited by an independent public accountant in accordance with requirements established by HUD as follows:
  1. At the end of construction after final contractor payment, but before the final draw close-out for projects with:
    - a. Minnesota Housing’s deferred funding
    - b. Minnesota Housing’s first mortgage
  2. At the end of the project and before IRS Form 8609 issuance for 4% and 9% low income housing tax credits (LIHTC) projects.
3. If contractor selection is through competitive bidding:
  - a. Bidding may be open to all or restricted to a few contractors: 3-5 is recommended.
  - b. Minnesota Housing prefers soliciting competitive bids from a selected list of contractors who are judged to be qualified for a specific job.
4. Regardless of what contractor selection method is used, contractor compensation must be in the form of a fixed price (stipulated sum). Refer to the Owner-Contractor Agreement section for information regarding acceptable forms of agreements.
5. If the project is federally funded:
  - a. Davis Bacon and Related Acts (DBRA) may be triggered with federally funded projects. Confirm with the owner, and/or the owner’s architect if the project has triggered DBRA requirements. If the project has triggered DBRA, confirm that the required DBRA documents are included in the bid package before it is released for bidding.
  - b. Section 3 and Black, Indigenous, and People of Color-owned Business Enterprise and Women-owned Business Enterprise (BIPOCBE/WBE)<sup>1</sup> compliance is required for federally funded projects. The Section 3 Guide and all attachments must be included in the bid package.

## **2.03 Prevailing Wage**

Under certain circumstances, awards of agency funds may trigger state prevailing wage requirements under Minn. Stat. § 116J.871. In broad terms, the statute applies to awards that meet the following conditions: (1) new housing construction (not rehabilitation); and (2) a single entity receives from Minnesota Housing \$200,000 or more of grant proceeds or \$500,000 of loan proceeds. The statute excludes new housing construction in which total financial assistance at a single project site is less than \$100,000.

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<sup>1</sup> BIPOCBE/WBE is also known as Minority-owned Business Enterprise and Women-owned Business Enterprise (MBE/WBE).

Please note the following statutory provisions:

- A state agency may provide financial assistance to a person only if the person receiving or benefiting from the financial assistance certifies to the commissioner of labor and industry that laborers and mechanics at the project site during construction, installation, remodeling, and repairs for which the financial assistance was provided will be paid the prevailing wage rate as defined in section 177.42, subdivision 6. Minn. Stat. § 116J.871, subd. 2.
- It is a misdemeanor for a person who has certified that prevailing wages will be paid to laborers and mechanics under subdivision 2 [see above] to subsequently fail to pay the prevailing wage. Each day a violation of this subdivision continues is a separate offense. Minn. Stat. § 116J.871, subd. 3.

In addition, a separate prevailing wage statute, Minn. Stat. § 177.41-.43, may apply if funds are used for a building that is publicly owned or leased.

All questions regarding state prevailing wages and compliance requirements should be directed to the Department of Labor and Industry as follows:

Division of Labor Standards and Apprenticeship  
Karen Bugar, State Program Administrator  
443 Lafayette Road N, St. Paul, MN 55155  
651.284.5091 or [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us)

## **Chapter 3 – Insurance Requirements**

Visit [Insurance Requirements](#) for Minnesota Housing’s insurance requirements.

## Chapter 4 – Owner-Contractor Agreement

Once the owner and contractor agree upon the scope of the contract documents and associated costs to perform the work, an agreement is prepared between the owner and contractor (single prime general contractor). Prior to being executed, the Owner-Contractor Agreement must be submitted to Minnesota Housing for review and approval.

### 4.01 Purpose

The Owner-Contractor Agreement reflects the goals and needs of the owner and contractor as established in the contract documents. It states the contract sum and its basis, describes the work, specifies the time of commencement and completion, and provides for payment to the contractor. It also includes other provisions and incorporates by reference several other documents related to the work and makes them part of the contract.

### 4.02 Requirements

1. The Owner-Contractor Agreement must be the American Institute of Architects (*AIA*) “A101-2017 Stipulated Sum Agreement,” or another industry standard form of agreement approved by Minnesota Housing, that when fully completed and executed, is acceptable to Minnesota Housing in form and substance.
2. The “AIA Document A201-2017, General Conditions of the Contract for Construction” must accompany the Owner-Contractor Agreement. This may be done by reference. Any modifications or extension of the general conditions must be via supplementary conditions or an AIA “Additions and Deletions” report.
3. The Owner-Contractor Agreement must state the date of commencement of the work and the date the contractor must achieve substantial completion of the entire work.
4. The Owner-Contractor Agreement must stipulate a contract sum (lump sum) the owner must pay the contractor for the contractor’s performance of the contract and all alternates, and/or unit prices, if any, of which the contract sum is based upon.
5. General contractor markup on all change order work, whether it’s their own self performed work or work by their subcontractors, must be negotiated between the owner and general contractor and must be included in the Owner-Contractor Agreement; however it must not be greater than the maximum combined general conditions, profit and overhead as described in Chapter 2.
6. Minnesota Housing permits one progress payment per month. The amount of time needed to process each progress payment will vary depending on many variables, including funding characteristics. Minnesota Housing strives to minimize processing time for each progress payment. The owner and contractor must agree on a reasonable time for processing progress payments that is acceptable to Minnesota Housing and other funders, which is normally 30 days.

## MINNESOTA HOUSING – APRIL 2022 CONTRACTOR’S GUIDE

7. Enumeration of specifications (project manual) and drawings must be done using exhibits prepared by the architect of record, which must be the same as those attached to the Architect’s Opinion Letter.
8. Unless a higher retainage is required by other funding source(s), the Owner-Contractor Agreement must include 5% retainage be withheld from each progress payment for work completed and materials presently stored (on-site or off-site). No retainage is required for building permits, performance and payment bonds, or general contractor paid builder’s risk insurance, comprehensive insurance, or winter conditions.
9. The Owner-Contractor Agreement must reference all specifications contained in project manual, drawings, addenda (if any) and any other documents forming part of the contract documents.
10. If Davis Bacon and Related Acts (DBRA) are triggered, the Owner-Contractor Agreement must contain the locked-in wage decision, HUD Form 4010, the contractor signed Section 3 Clause and Minnesota Housing’s Equal Employment Opportunity Policy Statement forms. Confirm with Minnesota Housing that the correct forms are included in the contract before it is executed.

## Chapter 5 – Contractor’s Surety

Contractor’s surety is required for new construction and/or rehabilitation type projects requiring disbursement of Minnesota Housing loan proceeds during the construction phase (construction loan). The contractor’s surety must be in the form of payment and performance bond acceptable to Minnesota Housing. Minnesota Housing may permit a Completion Assurance Fund (either letter of credit or cash) in lieu of bonds, if there is an identity of interest and if bonding is not possible. At Minnesota Housing’s sole discretion, contractor’s surety may be waived if the construction contract amount is \$500,000 or less.

### 5.01 Purpose

Contractor’s surety makes sure there will be sufficient funds to complete the work and that all sub-contractors will be paid under their sub-contracts.

### 5.02 Requirements

The following contractor’s surety requirements must be complied with:

1. Contractor’s surety acceptable to Minnesota Housing is required whenever a Minnesota Housing loan is a construction loan. Minnesota Housing typically does not require contractor’s surety if the entire Minnesota Housing loan is withheld until end of construction (end loan).
2. Contractor’s surety must be on Minnesota Housing’s form of payment and performance bonds unless otherwise approved by Minnesota Housing.
3. Prior to loan commitment, the contractor (single prime general contractor) must submit to Minnesota Housing evidence (draft copy of Minnesota Housing form of bonds or letter from surety company) that payment and performance bonds (dual obligee) in amounts equal to 100% of the construction contract sum can be obtained.
4. If, due to reasons acceptable to Minnesota Housing, the contractor is unable to obtain 100% bonding, the contractor may be required to supply a Completion Assurance Fund (unconditional irrevocable letter of credit acceptable to Minnesota Housing or cash) in an amount to be set by Minnesota Housing (normally 25% of the construction contract sum) in lieu of payment and performance bonds. Minnesota Housing, before accepting any Completion Assurance Fund, will require a Completion and Payment Assurance Agreement (as prepared by the Minnesota Housing) to be executed. The Completion and Payment Assurance Agreement establishes terms and conditions applicable to the effective Completion Assurance Fund issued to Minnesota Housing. If cash is substituted for a letter of credit, Minnesota Housing is not required to pay any interest on the cash portion of the Completion Assurance Fund.
5. The cost of payment and performance bonds may be included in the construction contract sum unless specifically directed otherwise. One hundred percent reimbursement for payment and performance bonds is allowed at the first pay draw if this cost is itemized separately on the application for Payment and Schedule of Values.

## **Chapter 6 – Contractor’s Role Overview**

It is important for the contractor to understand his or her role in Minnesota Housing’s development process, which is divided into the following stages (and Chapters):

1. Formal Application – Chapter 7
2. Project Launch Meeting – Chapter 8
3. Determining Feasibility – Chapter 9
4. Loan Commitment – Chapter 10
5. Loan Closing – Chapter 11
6. Construction Phase – Chapter 12
7. End of Construction – Chapter 13
8. Warranty Period – Chapter 14

If the contractor is selected during the earlier stages of the development process, the processing stages and contractor’s submissions generally follow Chapters 7-14 of this guide.

All contractor submissions listed for a processing stage must be received and approved by Minnesota Housing prior to proceeding to the next processing stage.

If the contractor is selected during the later stages of the development process, the Qualifications of Contractor (Minnesota Housing Form 209A) must be submitted as well as any other contractor submissions from previous processing stages as determined necessary by Minnesota Housing.

## Chapter 7 – Formal Application

The Minnesota Housing multifamily division currently offers two processes for owners to request funding: the Consolidated Request for Proposals (RFP) and year-round funding. Refer to [Minnesota Housing’s website](#) for more information regarding applying for multifamily resources.

If selected at time of formal application, the contractor (single prime general contractor) will likely be requested by the applicant to assist with preparing materials necessary for formal application.

### 7.01 Purpose

The formal application provides information needed to evaluate proposals and determine if funding program resources are eligible for proposed use.

### 7.02 Contractor’s Role

The contractor’s role during this stage generally consists of:

1. Conduct a site visit and assist the applicant in formulating a preliminary estimate of construction costs.
2. If rehabilitation, assist the owner and/or architect of record in preparing a preliminary work scope.
3. If new construction, provide basic value engineering input on schematic design concept options.
4. Complete the Qualifications of Contractor (Minnesota Housing Form 209A) available on the [Multifamily Development Team Qualification Forms](#) webpage.
5. Assist the applicant with completing Minnesota Housing’s Multifamily Application form.
6. Participate in the development of sustainability strategies and documentation. Guides and forms are available on the [Building Standards](#) webpage.

### 7.03 Acceptance for Processing

Once the development has been selected for processing, the owner will be notified, and a project launch meeting will be scheduled.



## Chapter 8 – Project Launch Meeting

Based upon owner notification of Minnesota Housing acceptance for processing, Minnesota Housing’s housing development officer (HDO) or loan processor schedules the project launch meeting shortly after the development has been selected for processing. Members of the development team are normally required to be present. The contractor is welcome to attend this meeting.

### 8.01 Purpose

The purpose of the project launch meeting is to allow the development team to present its specific proposal to Minnesota Housing, exchange ideas, identify shared goals, and allow Minnesota Housing staff to explain requirements and policies pertaining to the particular development. Topics of discussion include: Minnesota Housing’s underwriting process, characteristics of the site, site control, zoning issues, alternative design concepts, improvement costs, maintenance and operating expenses, market concerns, unit mix, affirmative action, equal employment requirements, characteristics of the loan, characteristics and capacity of the development team, Minnesota Housing design review process, procurement of construction, any unique aspects and next steps.

### 8.02 Contractor’s Role

If the contractor attends the project launch meeting, his/her role generally consists of:

1. If rehabilitation, becoming familiar with proposed work scope and commenting on scale and scope of improvements.
2. If new construction, reviewing schematic design documents and developing a preliminary construction cost estimate.
3. Visiting the site and being prepared to discuss any specific site issues having an impact on construction and/or construction costs.
4. Discussing results and the need for any further analysis/assessment resulting from available Phase I or Phase II Environmental Assessments, geotechnical exploration and/or an energy audit (if applicable).
5. Discussing approach to procuring construction, which includes:
  - a. Contractor qualifications.
    - i. Available on the [Multifamily Development Team Qualification Forms](#) webpage.
  - b. Contractor’s role in the development process
  - c. Contractor compensation
  - d. Construction bidding and negotiation
  - e. Owner-Contractor Agreement
  - f. Davis-Bacon wage rates (if applicable)

- g. Construction loan versus end loan
- h. Minnesota Housing forms and requirements available on the [Post-Selection Materials for Owners and Developers](#) webpage:
  - i. Assignment of Construction Contract
  - ii. Supplement to General Conditions of Agreement Between Owner and Contractor
  - iii. Construction Commitment
  - iv. Contractor surety
  - v. Contractor insurance
  - vi. Contract compliance and Equal Employment Opportunity (EEO) requirements
  - vii. Section 3 and Black, Indigenous, and People of Color-owned Business Enterprise and Women-owned Business Enterprise (BIPOCBE/WBE) (if applicable)
  - viii. Contractor’s cost certification, if applicable

Throughout the development process, additional working sessions involving the development team and Minnesota Housing staff may be required to resolve outstanding issues, if they arise.

## Chapter 9 – Determining Feasibility

Following the approval of schematic design, the architect of record will normally prepare design development documents consisting of drawings and other documents to fix and describe the size and character of the project as to architectural, civil, structural, mechanical and electrical systems and such other elements as may be appropriate. These design development documents must be forwarded to the contractor, if selected, for review.

### 9.01 Purpose

The purpose of determining feasibility is to determine if the development is viable and can move toward loan commitment.

### 9.02 Contractor’s Role

If the owner has identified a contractor by this time, the contractor’s role typically consists of:

1. If rehabilitation, review refined work scope and update estimate of site improvement costs.
2. If new construction, review design development documents, provide value engineering, and refine and update estimate of site improvement costs.
3. Submit to Minnesota Housing for review and approval contractor’s EEO Policy Statement (Minnesota Housing form) available on the [Post-Selection Materials for Owners and Developers](#) webpage.
4. Review the following information (normally provided by the owner), if applicable, and assist the owner and/or architect of record in finding solutions to any obstacles:
  - a. Geotechnical Exploration Report
  - b. Environmental Assessment(s). Refer to Minnesota Housing’s [Environmental Standards](#) webpage.
  - c. Energy Audit/ Energy Rebate Analysis. Refer to Chapter 8 of the *Rental Housing Design/ Construction Standards* available on the [Building Standards](#) webpage.
  - d. Boundary and Topographic Survey

During the design development review phase, revisions and modifications may be necessary to arrive at a design development that meets Minnesota Housing requirements, development team expectations and budget limitations. Again, additional working sessions involving the development team may be required.

## Chapter 10 – Loan Commitment

Throughout the loan commitment phase, major features of the contract documents will begin to be finalized, including architectural drawings and specifications. In addition, the construction process begins with bidding or negotiating a contract with the potential contractor. Once identified, the contractor may begin to review working drawings and specifications prior to their completion to confirm that the work scope is in line with previous cost estimates.

Once working drawings and specifications have been completed and approved by the development team and Minnesota Housing, they must be transformed into contract documents and forwarded to the contractor(s) for bid proposals.

### 10.01 Purpose

The loan commitment establishes the legal requirements and other conditions for the loan closing.

### 10.02 Contractor’s Role

Whether or not the bid was negotiated or competitive, the successful contractor’s role leading up to loan commitment normally is as follows:

1. Receive complete contract documents and provide a firm bid for completing the work (site improvements) in accordance with the requirements of the contract documents.
2. Understand bidding requirements such as: Davis-Bacon, contract compliance, Section 3 and Black, Indigenous, and People of Color-owned Business Enterprise and Women-owned Business Enterprise (BIPOCBE/WBE), Equal Employment Opportunity (EEO), bonding, etc. Forms and requirements are available on the [Post-Selection Materials for Owners and Developers](#) webpage. Refer to Chapter 9 of the *Rental Housing Design/Construction Standards* available on the [Building Standards](#) webpage for federally funded projects bidding requirements.
3. Complete and/or submit the following items to Minnesota Housing for review and approval:
  - a. Qualifications of Contractor (Minnesota Housing form), unless previously submitted and approved available on the [Multifamily Development Team Qualification Forms](#) webpage.
  - b. Schedule of Values form (AIA G702/703)
  - c. AIA 101-1997 owner-contractor lump sum agreement (draft form)
  - d. Evidence that building permit(s) are ready to be issued upon payment
  - e. Other forms and requirements available at [Post-Selection Materials for Owners and Developers](#) webpage:
    - i. Contract Compliance Activity Report (Minnesota Housing form)

## MINNESOTA HOUSING – APRIL 2022 CONTRACTOR’S GUIDE

- ii. Contractor’s evidence of insurance
  - iii. Contractor’s Construction Commitment Letter (Minnesota Housing form)
  - iv. Contractor’s evidence of bonding (draft copy using Minnesota Housing form of bonds)
4. Review/execute any other submission that may be required by any other lender.
5. Become familiar with the following Minnesota Housing required documents available on the [Post-Selection Materials for Owners and Developers](#) webpage, if applicable:
  - a. Assignment of Construction Contract
  - b. Supplement to General Conditions of the Agreement Between Owner and Contractor

## Chapter 11 – Loan Closing

The loan closing is the process by which loan documents and/or other legal documents are executed by the owner and the contractor, Minnesota Housing and possibly other lenders. The loan closing occurs before any loan proceeds are disbursed and typically before any work is started. It is based upon approval of loan documents, legal documents, 100% contract documents (plan review approval by staff architect), and award of the construction contract to a successful contractor (single prime general contractor).

At the time of the loan closing, Minnesota Housing secures a favorable opinion of counsel for the owner as to the requirements of the Minnesota Housing loan commitment and building loan agreement, and, upon recording of the loan documents, the title insurance policy insuring Minnesota Housing’s interest as mortgagee. In addition, all development financing must be in place prior to or concurrent with the loan closing.

If loan disbursement is needed during the construction phase (construction loan), the general partner(s) owner, owner’s attorney, general contractor, architect of record, surety representative, title insurance representative, and processing agent (if applicable) may attend the loan closing.

If loan disbursement is not needed until after construction is completed (end loan), the loan closing typically occurs after all site improvements are completed. The contractor is normally not required to attend.

If Minnesota Housing is the lead lender, the loan closing will normally take place at Minnesota Housing. Following loan closing, funds are disbursed in accordance with the Building Loan Agreement and Master Disbursement Agreement executed at loan closing.

### 11.01 Purpose

The loan closing typically places funding needed for construction and/or rehabilitation in effect so draw disbursements can be made during the construction phase or after construction is completed.

### 11.02 Contractor’s Role

1. The contractor’s role leading up to loan closing typically is as follows:
  - a. If construction loan, furnish to Minnesota Housing for review and approval the following items:
    - i. Executed copy of approved AIA Owner-Contractor Agreement.
    - ii. Issued copy of final building permit(s) along with paid receipt.
    - iii. Contractor’s first application for payment (AIA Document G702 and G703), along with any necessary invoices for backup purposes. (architect of record must certify

contractor’s application for payment.) The contractor’s first pay application at closing must be limited to building permit/plan review fees, performance and payment bonds, builder’s risk insurance, and other costs approved by Minnesota Housing. Other general conditions, mobilization, overhead, profit, preconstruction services, or other such costs must not be included in the first pay draw at closing.

- iv. Other forms and requirements available on the [Post-Selection Materials for Owners and Developers](#) webpage:
  - 1. Contractor’s evidence of insurance
  - 2. Contractor’s Construction Commitment Letter (Minnesota Housing form)
  - 3. Contractor’s evidence of bonding (draft copy using Minnesota Housing form of bonds)
  - 4. Assignment of construction contract (Minnesota Housing form)
  - 5. Supplement to General Conditions of the Agreement Between Owner and Contractor (Minnesota Housing form)
  - 6. Davis Bacon and Related Acts (DBRA)
  - 7. Davis-Bacon, contract compliance, Section 3 and Black, Indigenous, and People of Color-owned Business Enterprise and Women-owned Business Enterprise (BPOCBE/WBE), Equal Employment Opportunity (EEO), bonding, etc. Forms and requirements are available on the [Post-Selection Materials for Owners and Developers](#) webpage. For federally funded projects, also refer to Chapter 9 of the *Rental Housing Design/ Construction Standards* available on the [Building Standards](#) webpage.
- b. If end loan:
  - i. Complete site improvements according to contract documents approved by Minnesota Housing.
  - ii. A Minnesota Housing staff architect may or may not attend regularly scheduled, on-site draw meetings. If not attended, schedule and conduct a site inspection/walk through with the Minnesota Housing staff architect assigned to the development upon final construction completion.
  - iii. Minnesota Housing’s Construction Close-out Checklist Submittals:
    - 1. Certificate(s) of Substantial Completion
    - 2. Certificate(s) of Occupancy (or proof building permits have been closed out)
    - 3. Minnesota Housing’s Multifamily Intended Methods Worksheet. Available on the [Building Standards](#) webpage.
    - 4. Escrow agreement information if Escrow agreement needed
    - 5. Certificate of General Contractor and Owner. Available on the [Building Standards](#) webpage.

6. Applicable environmental documentation. Refer to Minnesota Housing’s [Environmental Standards](#) webpage.
  7. Final AIA G702/G703 Pay Application
  8. Other documents/information as determined necessary by Minnesota Housing prior to loan closing
- iv. Identify any remaining site improvements yet to be completed (punch list) including any alleged nonconforming items. (Minnesota Housing will typically require 1.5 times the estimated value for such items to be withheld, at time of loan closing from the contractor, until all items are completed and verified.) Minnesota Housing reserves the right to require all punch list and/or alleged nonconforming items to be completed and/or corrected prior to loan closing.
2. The contractor’s role at loan closing typically is as follows:
- If construction loan:
- i. Attend loan closing, if requested.
  - ii. Execute Minnesota Housing forms: Assignment of Construction Contract, Supplement to General Conditions of the Agreement between Owner and Contractor and Payment and Performance Bonds available on the [Post-Selection Materials for Owners and Developers](#) webpage.
  - iii. Participate in a pre-construction conference (typically held at time of loan closing) to discuss draw schedule and procedures.
- b. If end loan, contractor participation is not required.



## **Chapter 12 – Construction Phase**

Once funding has been secured to pay for work as required by the contract documents, and a Notice to Proceed has been issued by the owner, construction work may commence. During the construction phase, the contractor is responsible for the supervision required to assemble materials and perform labor to achieve project completion in accordance with the approved contract documents.

If Minnesota Housing funding is needed for any loan disbursement during the construction phase (construction loan), a loan closing must take place prior to commencing any work. A brief pre-construction meeting is normally held during or immediately following the loan closing. If Minnesota Housing funding is not needed for any loan disbursement until after construction is completed (end loan), the loan closing does not typically take place until after construction is completed. Whether or not the loan was a construction loan or an end loan, Minnesota Housing must be periodically permitted to enter the site to inspect the work.

It is essential that the project be constructed in accordance with the approved contract documents. Minnesota Housing’s “Supplement to General Condition of the Agreement between Owner and Contractor,” as executed by the contractor and owner whenever Minnesota Housing is acting as coordinating lender and loan disbursement is needed during the construction phase, gives Minnesota Housing the right to enter the site and inspect the work. These visits may be announced or unannounced and are at the sole discretion of Minnesota Housing. If at any time during the construction of the project, in the sole opinion of Minnesota Housing, the contractor has failed to perform the work under the contract documents in accordance with the contract documents or has failed to utilize materials in accordance with the contract documents, Minnesota Housing may issue a Correction Order to the contractor for correction of such items. This can be done without the approval of the owner.

If an end loan, and in the sole opinion of Minnesota Housing, the contractor has failed to perform the work under the contract documents in accordance with the contract documents, or the contractor has failed to utilize materials in accordance with the contract documents, Minnesota Housing may elect not to close on the loan. This could be for an indefinite period of time or until all nonconforming items are satisfactorily corrected.

### **12.01 Purpose**

The construction phase brings the bid documents and previous stages of the Minnesota Housing development process to realization as site improvements are completed in accordance with the contract documents.

### **12.02 Contractor’s Role**

The contractor’s role during the construction phase generally consists of the following:

1. Attend a pre-construction meeting. The purpose of the pre-construction meeting is to establish procedures to be followed during the construction phase of the development.

The owner, architect of record, contractor, Minnesota Housing staff architect, and labor standards officer (if applicable) must attend. Topics normally discussed include:

- a. Monthly draw meeting schedule
  - b. Construction draw procedure
  - c. Handling requests for changes
  - d. Temporary project sign
  - e. Davis Bacon and Related Acts (DBRA) (if applicable)
  - f. Section 3 and Black, Indigenous, and People of Color-owned Business Enterprise and Women-owned Business Enterprise (BIPOCBE/WBE) (if applicable)
2. Administer on-site construction meetings:
    - a. Every two weeks is preferred; however, at least once a month in conjunction with the monthly draw meeting is required.
    - b. Prepare and disseminate construction meeting minutes.
  3. Call for the architect of record’s review and approval of shop drawings, product data, samples, and mock-ups.
  4. Provide supervision required to assemble materials and performing labor to achieve a completed project.
  5. Study and follow the contract documents and laws and regulations affecting construction and cooperate with the architect of record and other contractors and subcontractors to the extent necessary to accomplish the work.
  6. Select the means, methods, techniques, sequences, and safety procedures for coordinating and constructing the work on time and within budget.
  7. Administer construction tests and inspections.
  8. Prepare Contractor’s Application and Certificate for Payment (AIA Documents G702 and G703).
  9. Pay for all the labor, materials, equipment, utilities, and services necessary to accomplish the work.
  10. Fulfill all contractual responsibilities for permits, bonds, certificates, and other written notices, authorizations, approvals, objections, and submittals.
  11. Submit a Request for Information (RFI) to the architect of record whenever documents are not clear in their requirements.
  12. Construction contract modifications:
    - a. Wait for approval before executing any design or material modifications.

- b. When significant design or material modifications occur that affect the construction cost, and/or when extension of the contract time is justified, the architect of record must prepare a change order (AIA Document G701).
- c. All change orders must include a detailed material and labor quantity and cost itemization (normally prepared by the contractor) showing how adjustments to the contract sum were determined.

Change orders must be approved by the owner, contractor, architect of record, and the Minnesota Housing staff architect.

- 13. Notify Minnesota Housing immediately in the event of owner default.
- 14. Initiate the project closeout process, which typically includes the following:
  - a. Provide a list of incomplete items (punch list) including monetary value of each.
  - b. Notify owner of any changes in insurance coverage.
  - c. Submit all warranties, maintenance contracts and required operating instructions.
  - d. Show compliance with all legal construction requirements and inspections as required for certificate of occupancy.
  - e. Submit record documents showing recorded changes made during construction to drawings, specifications, addenda, etc.
  - f. Deliver replacement and maintenance stock of material, if specified.
  - g. Complete keying schedule, make final changes to lock cylinders and coordinate shifting responsibility for security to the owner.
  - h. Instruct the owner in the operation and maintenance of systems and equipment.
  - i. Thoroughly clean construction debris from all site areas.
  - j. Restore damaged finishes.
  - k. Submit the required guarantees and certificates of inspection.
  - l. Obtain certificate(s) of occupancy from the local municipality (if applicable).
  - m. Request architect of record’s inspection for substantial completion.
- 15. Perform any additional duties associated with completing the work as required by the contract documents.
- 16. Complete and submit Minnesota Housing’s “Certificate of General Contractor.”

Once the architect of record inspects the work and judges it to be substantially complete in accordance with contract documents, the end of construction begins.

## Chapter 13 – End of Construction

Once the architect of record has determined the work is substantially complete and has issued a Certificate of Substantial Completion (AIA Document G704), the contractor must work diligently to satisfy all remaining contractual obligations, including completing and/or correcting any remaining punch list items. The contractor must not request the architect’s final inspection and a final certificate for payment until they are confident everything is in order, including any Correction Orders issued by Minnesota Housing. The Minnesota Housing staff architect typically visits the site to inspect the work around this time.

Regardless if loan disbursement is needed during the construction phase (construction loan) or if loan disbursement is not needed until after construction is completed (end loan), it is important that all site improvements are constructed in accordance with the approved contract documents.

If portions of the work cannot be completed for some time after the work is determined substantially complete and the project status cannot remain open, Minnesota Housing may approve disbursement of funds for uncompleted work (normally 1.5 times the estimated value) into an escrow account governed by terms of an agreed upon escrow agreement. Funds must be withheld until all work is complete and all terms of the escrow agreement are satisfied.

### 13.01 Purpose

End of construction marks completion of the project. This typically involves taking the project from the point of substantial completion to final completion and payment of the contractor. This is often referred to as project close-out.

### 13.02 Contractor’s Role

The contractor’s role during the end of construction processing stage generally consists of the following Construction Close-out Checklist submittals:

1. Execute the Certificate of Substantial Completion prepared by the architect.
2. Complete the work called for by the contract; including all punch list items and any corrections orders issued by Minnesota Housing.
3. If rehab, provide evidence that all permits are closed out.
4. Obtain final certificate(s) of occupancy (if applicable).
5. Request the architect’s final inspection of the work and a final application for payment.
6. Provide an affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the work for which the owner might in any way be responsible, have been paid or have been otherwise satisfied.
7. Provide certification of actual costs to Minnesota Housing when applicable (refer above).
8. Provide consent of surety to the final payment when applicable.

9. Provide all closeout information for Davis Bacon and Related Acts (DBRA) and Section 3 and Black, Indigenous, and People of Color-owned Business Enterprise and Women-owned Business Enterprise (BIPOCBE/WBE) (if applicable).
10. Execute and forwarding to the owner, compliance and documentation as per Minnesota Housing Rental Housing Design/Construction Standards, Chapter 8 – Sustainable Housing Requirements.
11. Provide final Operation and Maintenance (O&M) manuals, occupant manual, and homeowner and new resident orientation.
12. Perform any other duties associated with the project close-out process, as required by the Owner-Contractor Agreement.
13. Complete a Minnesota Housing Certificate of General Contractor and Owner form.

Once the architect of record issues the contractor’s final certificate for payment, it typically marks the end of the end of construction phase. If an as-built survey is required after the work is completed, Minnesota Housing may withhold final payment to the contractor until the as-built survey is completed and Minnesota Housing is satisfied with the results. Final payment may also be withheld until all Construction Close-out Checklist items are satisfactorily received.

At approximately eleven months following the date of substantial completion, a warranty inspection may be required involving the contractor. Refer to the warranty period of the development process.

### **13.03 Identity of Interest – Construction Cost Certification**

When there is an identity of interest between the Owner and contractor (as defined in Chapter 2 of this guide), the contractor must submit a *Contractor’s Certificate of Actual Cost* HUD Form 92330A audited by an independent public accountant in accordance with requirements established by HUD as follows:

1. At the end of construction after final contractor payment, but before the final draw close-out for projects with:
  - a. Minnesota Housing’s deferred funding
  - b. Minnesota Housing’s first mortgage
2. At the end of the project and before IRS Form 8609 issuance for 4% and 9% low income housing tax credits (LIHTC) projects.

## Chapter 14 – Warranty Period

The warranty period includes the requirements associated with the AIA general conditions of the contract for construction and requires the contractor to correct defective work within one year after the date of substantial completion. It also includes the statutory warranties providing protection mechanisms against faulty workmanship and defective materials beyond the one-year correction period, and any manufacturer warranties. The warranty period generally starts on the date of substantial completion for those portions of the work covered by the Certificate of Substantial Completion and remains in effect until all warranties expire.

### 14.01 Purpose

The purpose of the warranty period is to make sure the expected performance of all building elements is covered during the warranty period.

### 14.02 Contractor’s Role

The contractor’s role during the warranty period generally consists of the following:

1. Before the correction period expires, participate in an eleventh month review with the owner (or owner’s representative) and architect (if applicable) to determine if there are any problems associated with performance of specified materials, systems, and equipment, and secure any needed repairs or replacements as follows:
  - a. If any problem has resulted from failure in a material or system required by the construction documents, correct such defects or deficiencies per instructions from the architect of record and/or owner; or
  - b. If any problem has resulted from improper operation or maintenance of equipment, observe and advise the owner on proper operations and maintenance measures.
2. After the correction period expires, correct any ongoing defect if it is determined to be due to noncompliance with building standards as promulgated by statutory warranties.
3. Perform any other duties associated with the project’s warranty period as required by the Owner-Contractor Agreement.

## Chapter 15 – Fair Housing Policy

It is the policy of Minnesota Housing to affirmatively further fair housing in all its programs so that individuals of similar income levels have equal access to Minnesota Housing programs, regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, familial status, gender identity or sexual orientation.

Minnesota Housing's fair housing policy incorporates the requirements of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment Act of 1988, as well as the Minnesota Human Rights Act. Housing providers are expected to comply with the applicable statutes, regulations, and related policy guidance. Housing providers should make sure that admissions, occupancy, marketing and operating procedures comply with non-discrimination requirements.

In part, the Fair Housing Act and the Minnesota Human Rights Act make it unlawful to, because of protected class status:

- Discriminate in the selection/acceptance of applicants in the rental of housing units;
- Discriminate in terms, conditions or privileges of the rental of a dwelling unit or services or facilities;
- Engage in any conduct relating to the provision of housing that otherwise make unavailable or denies the rental of a dwelling unit;
- Make, print or publish (or cause to make, print or publish) notices, statements or advertisements that indicate preferences or limitations based on protected class status;
- Represent a dwelling is not available when it is in fact available;
- Deny access to, or membership or participation in, associations or other services organizations or facilities relating to the business of renting a dwelling or discriminate in the terms or conditions of membership or participation; or
- Engage in harassment or quid pro quo negotiations related to the rental of a dwelling unit.

Minnesota Housing has a commitment to affirmatively further fair housing for individuals with disabilities by promoting the accessibility requirements set out in the Fair Housing Act, which establish design and construction mandates for covered multifamily dwellings and requires housing providers to make reasonable accommodations and to allow persons with disabilities to make reasonable modifications.

Applicants will be required to submit an Affirmative Fair Housing Marketing Plan at the time of application, to update the plan regularly and to use affirmative fair housing marketing practices in soliciting renters, determining eligibility and concluding all transactions.

As a condition of funding through Minnesota Housing, housing providers are not permitted to refuse to lease a unit to, or discriminate against, a prospective resident solely because the prospective resident has a Housing Choice Voucher or other form of tenant-based rental assistance.



## **Chapter 16 – Fraud, Misuse of Funds, Conflict of Interest, Suspension, and Disclosure and Reporting**

### **16.01 Fraud**

Fraud is any intentionally deceptive action made for personal gain or to damage another.

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing and witnesses, discovers evidence of, receives a report from another source, or has other reasonable basis to suspect that fraud or embezzlement has occurred must immediately make a report through one of the ways described in section 16.05.

### **16.02 Misuse of Funds**

A loan or grant agreement is a legal contract. The borrower or grantee promises to use the funds to engage in certain activities or procure certain goods or services while Minnesota Housing agrees to provide funds to the borrower or grantee to pay for those activities, goods or services. Regardless of the Minnesota Housing program or funding source, the borrower or grantee must use Minnesota Housing funds as agreed, and the borrower or grantee must maintain appropriate documentation to prove that funds were used for the intended purpose(s).

A misuse of funds shall be deemed to have occurred when: (1) Minnesota Housing funds are not used as agreed by a borrower or grantee; or (2) A borrower or grantee cannot provide adequate documentation to establish that Minnesota Housing funds were used in accordance with the terms and conditions of the loan or grant agreement.

Any borrower or grantee (including its employees and affiliates) of Minnesota Housing funds that discovers evidence, receives a report from another source, or has other reasonable basis to suspect that a misuse of funds has occurred must immediately make a report through one of the ways described in section 16.05.

### **16.03 Conflict of Interest**

A conflict of interest, actual, potential, or perceived, occurs when a person has an actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A potential or perceived conflict of interest exists even if no unethical, improper or illegal act results from it.

An individual conflict of interest is any situation in which one’s judgment, actions or non-action could be interpreted to be influenced by something that would benefit them directly or through indirect gain to a friend, relative, acquaintance or business or organization with which they are involved.

Organizational conflicts of interest occur when:

- A contracting party is unable or potentially unable to render impartial assistance or advice to Minnesota Housing due to competing duties or loyalties
- A contracting party’s objectivity in carrying out their responsibilities might be otherwise impaired due to competing duties or loyalties
- A contracting party has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors

Once made aware of a conflict of interest, Minnesota Housing will make a determination before disbursing any further funds or processing an award. Determinations could include:

- Revising the contracting party’s responsibilities to mitigate the conflict
- Allowing the contracting party to create firewalls that mitigate the conflict
- Asking the contracting party to submit an organizational conflict of interest mitigation plan
- Terminating the contracting party’s participation

Any person or entity (including its employees and affiliates) that enters into an agreement with Minnesota Housing must avoid and immediately disclose to Minnesota Housing any and all actual, perceived or potential conflicts of interest through one of the ways described in section 16.05.

A contracting party should review its contract agreement and Request for Proposals (RFP) material, if applicable, for further requirements.

#### **16.04 Suspension**

By entering into any agreement with Minnesota Housing, a contracting party represents that the contracting party (including its employees or affiliates that will have direct control over the subject of the agreement) has not been suspended from doing business with Minnesota Housing. Please refer to Minnesota Housing’s website for a list of [suspended individuals and organizations](#).

#### **16.05 Disclosure and Reporting**

Minnesota Housing promotes a “speak-up, see something, say something” culture whereby internal staff, external business partners (e.g., grantees, borrowers) and the general public are encouraged to report instances of fraud, misuse of funds, conflicts of interest, or other concerns without fear of retaliation. You may report wrongdoing or other concerns by contacting:

- Minnesota Housing’s chief risk officer
- Any member of Minnesota Housing’s [Servant Leadership Team](#)

## MINNESOTA HOUSING – APRIL 2022 CONTRACTOR’S GUIDE

- [EthicsPoint](#), the Minnesota Housing hotline reporting service vendor