

(B) The average yield on the most recently issued 30-year marketable obligations of the United States during the 1-month period immediately preceding the month in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover the administrative costs and probable losses under the program; and (C) Any applicable statutory ceiling on the loan interest rate including an allowance to cover administrative costs and probable losses under the program.

(ii) The date of submission of a request for conditional or firm commitment is the date that the Borrower submits the complete and acceptable request to HUD. The date of the submission of a request for commitment will not be affected by any subsequent resubmission of the request by the Borrower or by any reprocessing of the request by HUD.

(iii) The Borrower may withdraw its election of the optional interest rate at any time before initial loan closing. If the Borrower elected the optional interest rate with its request for conditional commitment and withdraws its election, the loan will bear interest at the rate determined under paragraph (g)(1) of this section, unless the Borrower elects an optional interest rate with its request for firm commitment. If the Borrower withdraws its election after the date of submission of its request for firm commitment, the loan will bear interest at the rate determined under paragraph (g)(1) of this section.

(iv) If initial loan closing has not occurred within 18 months after the Notice of Section 202 Fund Reservation is issued, the Borrower's election of the optional rate will be cancelled and the loan will bear interest at the rate determined under paragraph (g)(1) of this section.

(3) *Allowance for administrative costs and probable losses.* For the purpose of computing the loan interest rate under paragraphs (g) (1) and (2) of this section, the allowance to cover administrative costs and probable losses under the program is one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods.

(h) *Announcement of interest rates.* (1) HUD will annually announce the loan interest rate determination under paragraph (g)(1) of this section by publishing notice of the rate in the FEDERAL REGISTER. The FEDERAL REGISTER notice will include a statement explaining the basis for the interest rate determination.

(2) Upon the Borrower's request, HUD will provide available current information concerning the determination of the interest rate under paragraph (g)(2) of this section.

(i) The loan shall be secured by a first mortgage on real estate in fee simple or long term leasehold. The mortgage shall be repayable during a term not to exceed 40 years and shall be subject to such terms and conditions as shall be determined by the Assistant Secretary.

(j) In order to assure HUD of the Borrower's continued commitment to the development, management, and operation of the project, a minimum capital investment is required of Section 202 Borrowers of one-half of one percent (0.5%) of the mortgage amount committed to be disbursed, not to exceed the amount of \$10,000. Section 106(b) loans made pursuant to section 106 of the Housing Act of 1968 may not be utilized to meet the minimum capital investment requirement. Such minimum capital investment shall be placed in escrow at the initial closing of the Section 202 loan and shall be held by HUD or other escrow agent acceptable to the field office for not less than a 3-year period from the date of initial occupancy and may be used for operating expenses or deficits as may be directed by the field office. Any unexpended balance remaining in the minimum capital investment account at the end of the escrow period shall be returned to the Borrower.

§ 891.530 Prepayment privileges.

(a) The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any Section 202 project is prohibited, unless the Secretary gives prior written approval.

(b) The Secretary may not grant approval unless he or she has determined that the prepayment or transfer of the

loan is part of a transaction that will ensure the continued operation of the project, until the original maturity date of the loan, in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§ 891.535 Requirements for awarding construction contracts.

(a) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed construction contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(b) Each Borrower is permitted to use either competitive bidding (formal advertising) in selecting a construction contractor or the negotiated non-competitive method of contract award under paragraph (c) of this section. In competitive bidding, sealed bids are publicly solicited and a firm, fixed-price contract is awarded (in accordance with the requirements of this paragraph (b)) to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. Regardless of which method a Borrower uses, there should be an opportunity for minority owned and women owned businesses to be awarded a contract.

(1) Bids shall be solicited from an adequate number of known contractors a reasonable time prior to the date set forth for opening of bids. In addition, the invitation shall be publicly advertised.

(2) The invitation for bids shall specify:

- (i) The name of the Borrower;
- (ii) A brief description of the proposed project and the proposed construction contract;
- (iii) A preliminary estimate of cost;
- (iv) That bids will be received at a specified place until a specified time at which time and place all bids will be publicly opened;

(v) The location where the proposed forms of contract and bid documents, including plans and specifications, are on file and may be obtained on payment of a specified returnable deposit;

(vi) That a certified check or bank draft or satisfactory bid bond in the amount of 5 percent of the bid shall be submitted with the bid;

(vii) That the successful bidder will be required to provide assurance of completion in the form of a performance and payment bond or cash escrow; and

(viii) That the Borrower reserves the right to reject any or all bids and to waive any informality.

(3) The bid form, which must be submitted by all bidders, must specify:

- (i) The name of the project;
- (ii) The name and address of the bidder;

(iii) 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;

(iv) That the security specified in paragraph (b)(2)(vi) of this section accompanies the bid;

(v) The period after the bid opening during which the bid shall not be withdrawn without the consent of the Borrower;

(vi) That the bidder will, if notified of acceptance of such bid within a specified period after the opening, execute and deliver a contract in the prescribed form and furnish the required bond within ten days thereafter;

(vii) That the bidder acknowledges any amendments to the invitation for bids; and

(viii) That the bidder certifies that the bid is in strict accordance 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 to bind the bidder.

(4) Bidding shall be open to all general contractors who furnish the security guaranteeing their bid, as described in paragraph (b)(2)(vi) of this section.

(5) All bids shall be opened publicly at the time and place stated in the invitation for bids, in the presence of the