

BROCKTON HOUSING AUTHORITY

PROCUREMENT POLICY

Established for the Brockton Housing Authority (BHA) by Board action on November 20, 2001 and Amended September 24, 2020. This Statement of Procurement Policy complies with HUD’s Annual Contributions Contract (ACC), HUD Handbook 7460.8, REV 2 “Procurement Handbook for Public Housing Agencies,” procurement standards of 2 CFR §§ 200.317 – 200.326, the General Laws of the Commonwealth of Massachusetts, Chapters 30, 30B and 149, and the Model of Procurement Code for State and Local Governments: Recommended Regulations (American Bar Association, 1980).

I. GENERAL PROVISIONS

A. Purpose

The purpose of this Statement of Procurement Policy is to: provide for the fair and equitable treatment of all persons or firms involved in purchasing by the BHA; assure that supplies, services, and construction are procured efficiently, effectively and at the most favorable prices available to the BHA; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that BHA purchasing actions are in full compliance with applicable Federal standard, HUD regulations, and State and local laws.

B. Application

This Statement of Procurement Policy applies to all procurement activities of the BHA, or for which the BHA maintains a fiduciary responsibility, regardless of funding source.

This Statement of Procurement Policy (Statement) applies to all Contracts for the procurement of supplies, services, and construction entered into by the BHA after the effective date of this Statement. It shall apply to every expenditure of funds by the BHA for public housing irrespective of the source of funds, including Contracts which do not involve an obligation of funds (such as concession Contracts); however, nothing in this Statement shall prevent the BHA from complying with the terms and conditions of any grant, Contract, gift or bequest that is otherwise consistent with law. The term “procurement,” as used in this Statement includes both Contracts and modifications (including change orders) for construction or services, as well as purchase, lease, or rental of supplies and equipment.

C. Public Access to Procurement Information

Procurement information shall be a matter of public record to the extent provided in Massachusetts and Federal law and shall be available to the public as provided by statute.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

- A. All procurement transactions shall be administered by the Chief/Procurement Officer (Procurement Officer), who shall be the Executive Director of the BHA. The Executive Director shall issue operational procedures to implement this Statement, which shall be based on HUD Handbook 7460.8. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section IX below consistent with State law. All procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of 2 C.F.R. 200.319.

The Chief Procurement Officer shall delegate procurement powers and duties to such employees of the Authority as may be necessary in the conduct of their duties. Appointments and delegations shall be reported to the Board of Commissioners and to the Inspector General, Commonwealth of Massachusetts, as required by Massachusetts General Laws, Chapter 30B.

- B. The Procurement Officer or his/her designee shall ensure that:

Procurement requirements include the following and are subject to an annual planning process to assure efficient and economical purchasing:

- (1) contracts and modifications are in writing, clearly specifying the desired supplies, services, or construction, and are supported by sufficient documentation regarding the history of the procurement, including as a minimum the method of procurement chosen, the selection of the contract type, the rationale for selecting or rejecting offer, and the basis for the contract price;
- (2) for procurements other than small purchases, public notice is given of each upcoming procurement at least 14 days (or other time period if required by State or local law) before a solicitation is issued; responses to such notice are honored to the maximum extent practical; a minimum of 15 days (or other time period if required by State or local law) is provided for preparation and submission of bids or proposal; and notice of contract awards is made available to the public.

(3) solicitation procedures are conducted in full compliance with Federal standards stated in 2 C.F.R. 200.317 – 200.326, or State and local laws that are more stringent, provided they are consistent with 2 C.F.R. 200.317 – 200.326;

(4) an independent cost estimate is prepared before solicitation issuance and is appropriately safeguarded for each procurement (and contract modification) above the small purchase limitation, and a cost or price analysis is conducted of the responses received for all procurements. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the BHA must make independent estimates before receiving bids or proposals;

(5) contract award is made to the responsive and responsible bidder offering the lowest price (for sealed bid contracts) or contract award is made to the offeror whose proposal offers the greatest value to the BHA, considering price, technical, and other factors as specified in the solicitation (for contracts awarded based on competitive proposal); unsuccessful firms are notified within ten days (or other time period required by State or local law) after contract award;

(6) there are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected before payment, and payment is made promptly for contract work performed and accepted; and

(7) the BHA complies with applicable HUD or State review requirements, as provided in the operational procedures supplementing this Statement.

(8) the BHA maintains records sufficient to detail the history of procurement, including, without limitation, records including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

C. Competition – PROHIBITED PRACTICES

1. Placing unreasonable requirements on firms in order for them to qualify to do business.

2. Requiring unnecessary experience or excessive bonding.
3. Non-competitive pricing practices between firms or affiliated companies.
4. Non-competitive awards to consultants on retainer contracts.
5. Organizational or personal conflicts of interest.
6. Specifying only a brand name product without allowing an equal product to be offered.
7. in State or local geographical preference in the evaluation of bids or proposals is prohibited except in cases where applicable Federal statutes expressly mandate or encourage preference. State licensing laws are not preempted. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
8. any arbitrary action in the procurement process is prohibited.
9. Award of a Contract to any contractor that has developed or drafted specifications, requirements, statements of work, invitations for bids or requests for proposals for such Contract or its underlying procurement.

D. This Statement and any later changes shall be submitted to the Board of Commissioners for approval. The Board is responsible for ensuring that any procurement policies which are adopted are appropriate for the BHA.

III. PROCUREMENT METHODS

A. Selection of Method

If it has been decided that the BHA will directly purchase the required items, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement. No contract in excess of \$50,000.00 will be awarded without a vote by the Board of Commissioners authorizing funding for such contract.

B. Small Purchase Procedures

- (1) General. Any contract not exceeding \$50,000.00 state and \$100,000.00 federal may be made in accordance with the small

purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section VIII of this Statement). Except for petty cash purchases, which are subject to controls as stated in Subsection 2 below, all procurements shall require the prior approval of the Executive Director or his designee.

- (2) Petty Cash Purchases. Small purchases under \$50.00, which can be satisfied by local sources, may be processed through the use of a petty cash account. The Procurement Officer shall ensure that: the account is established in the amount of \$200.00 which is sufficient to cover small purchases made during a reasonable period; security is maintained and only authorized individuals have access to the account; the account is periodically reconciled and replenished by submission of a voucher to the BHA Director of Finance; and, the account is periodically audited by the Director of Finance or his designee to validate proper use and to verify that the account total equals cash on hand plus the total of accumulated vouchers.
- (3) Small purchases of Supplies/Goods/Services \$10,000.00 or less. A Scope of Work or Product Description shall be prepared. For small purchases below \$10,000.00 may be made by Purchase Order , and only one quotation need be solicited if the price received, when viewed in light of sound business practices, is considered reasonable. Such purchases must be distributed equitably among qualified sources. If practicable, a quotation shall be solicited from other than the previous source before placing a repeat order. Best business judgment and sound business judgment practices shall prevail.
- (4) For small purchases of Supplies/Goods/Services in excess of \$10,000.00, but not exceeding \$50,000.00, a Scope of Work or Product Description shall be made and no less than three offerors shall be solicited to submit price quotations, which may be obtained orally, in writing, via facsimile, electronic mail, or by telephone. Award shall be made to the offeror providing the lowest price, unless justified in writing based on consideration of price and other specific factors, such as for architect/engineer contracts. If non-price factors are used they shall be disclosed to all those solicited. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and the amount of each quotation shall be recorded and maintained as a public record (unless

otherwise provided in State or local law). A contract shall be executed and if State funds are utilized then contracts in excess of \$10,000 are subject to DHCD's approval and sign-off.

- (5) For Vertical Construction Building /Materials/Related Work under MGL c. 149 § 44-A-J not in excess of \$10,000 utilizing State funds, sound business practices shall be used. A quote package shall be assembled that includes the appropriate DHCD Front end, A Scope of Work, current Massachusetts Prevailing Wage rates, and insurance as dictated by the DHCD Front End. Records shall be kept as to the name & address of the persons/businesses quotes were solicited from, their quotes and or non-response, and finally the name and address of the successful person/business from whom the services were procured. For work utilizing Federal funds the above quote package and practices shall only be amended to include the appropriate HUD Front End, HUD insurance requirements, and Davis-Bacon wages substituted if appropriate (12 or more units involved); otherwise Massachusetts Prevailing Wages shall apply.
- (6) For Vertical Construction Building /Materials/Related Work under MGL c. 149 § 44-A-J from \$10,000 but not to exceed \$50,000, 000 utilizing State funds, a quote package shall be assembled that includes the appropriate DHCD Front End, a Scope of Work, current Massachusetts Prevailing Wage rates, and insurance as dictated by the DHCD front End. Written quotes shall be solicited through the Public Notification Process: Advertise in once 2 weeks prior to the bid submission date as follows: (i) Central Register; (ii) BHA website; (iii) COMMBUYS; and (iv) a conspicuous place near BHA's offices. Rule of Award shall be to the responsible person/business at the lowest price. The successful bidder shall provide proof of 10 hour OSHA safety training. For work utilizing Federal funds the above quote package and practices shall only be amended to include the appropriate HUD Front End, HUD insurance requirements, and Davis-Bacon wages substituted if appropriate (12 or more units involved); otherwise Massachusetts Prevailing Wages shall apply.
- (7) For Vertical Construction Building /Materials/Related Work under MGL c. 149 § 44-A-J for projects \$50,000 to \$150,000, utilizing state funding, the appropriate DHCD Front End will be used, an Architect/Engineer will prepare the Scope of Work, Massachusetts Prevailing Wage Rates will be included, a 5% bid deposit will be required and a Payment Bond in the amount of ½ of the contract price; the BHA at its discretion may require a Performance Bond & Payment Bond of 100% of contract amount; and the bid will be advertised as follows:

Advertise in once 2 weeks prior to the bid submission date as follows: (i) Central Register; (ii) a newspaper of general circulation (e.g., the Brockton Enterprise); (iii) COMMBUYS; and (iv) notice shall be posted at BHA's offices. For work utilizing Federal funds the above bid package and practices shall only be amended to include the appropriate HUD Front End, HUD insurance requirements, and Davis-Bacon wages substituted if appropriate (12 or more units involved); otherwise Massachusetts Prevailing Wages shall apply.

C. Sealed Bids/Formal Advertising

- (1) Conditions for Use. Contracts for supplies/Goods/Services in excess of \$50,000.00 shall be awarded based on an IFB or RFP, which shall be advertised in the local newspaper and the Goods & Services Bulletin; a Scope of Work or Product Description shall be included. Competitive sealed bidding will be used if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; and the selection of the successful bidder can be made principally on the basis of price. A fully executed contract shall be used.

Sealed bidding is the preferred method for construction procurement. For State and Federal procurements ~~under~~ sealed bidding shall be used for all construction and equipment contracts exceeding the small purchase limitation. Supplies and services available under the State Compass or Federal GSA contract/price schedule have been competitively procured. Formal advertising/competition is not necessary when using these sources. For professional services contracts, including legal services and architect/engineering services, the RFP process should be used rather than sealed bidding

- (2) Solicitation and Receipt of Bids. An Invitation For Bids (IFB) including specifications) shall be issued and the IFB will be advertised as follows: Advertise in once 2 weeks prior to the bid submission date as follows: (i) Goods and Services Bulletin; (ii) a newspaper of general circulation (e.g., the Brockton Enterprise); (iii) COMMBUYS; and (iv) notice shall be posted at BHA's offices. The specifications

shall include all contractual terms and conditions applicable to the procurement, dependent on the funding source, including a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the Invitation for Bids. The Invitation for Bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening.

(3) Bid Opening and Award. Bids shall be opened publicly and in the presence of at least one witness. An abstract of bids shall be recorded and the bids shall be available for public inspection. Award shall be made as provided in the Invitation For Bids for written notice to the successful bidder. If equal low bids are received from responsible bidders, award shall be made by drawing lots or similar random method, unless otherwise provided in State or local law and state in the Invitation For Bids. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price.

(4) Mistakes in Bids

(a) Correction or withdrawal of inadvertently erroneous bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the Invitation For Bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear if the bidder submits convincing evidence that a mistake was made.

(b) Provisions allowing correction or withdrawal of bid mistakes shall be supported by written determination signed by the Contracting Officer. After bid opening, no changes in bid prices or other provisions of bids

prejudicial to the interest of the BHA or fair competition shall be permitted.

(5) Bonds. In addition to the other requirements of this Statement, the following requirements apply:

(a) For construction contracts exceeding \$150,000.00, other than those specified in 5(b) and 5(c) below, contractors shall be required to submit the following, unless otherwise required by State or local laws or regulations:

- (1) bid guarantee from each bidder equivalent to 5% of the bid price; and
- (2) a performance bond for 100% of the contract price; and
- (3) a payment bond for 100% of the contract price.

(a) In the case of construction of conventional development projects funded pursuant to the U.S. Housing Act of 1937, the contractor shall be required to submit the following, unless otherwise required by State or local laws or regulations:

- (1) bid guarantee from each bidder equivalent to 5% of the bid price; and
- (2) one of the following:
 - (i) a performance and payment bond for 100% for the contract price; or
 - (ii) separate performance and payment bonds, each for 50% or more of the contract price; or
 - (iii) a 20% cash escrow; or
 - (iv) a 25% irrevocable letter of credit.
- (c) or service contracts exceeding \$50,000.00 annual cost, IFB/IFP advertising shall specify that bidders will be required to submit:

- (d) A bid guarantee in the form of a certified check, bank treasurers or cashiers check, or a bond issued by a surety company licensed by the Massachusetts State Division of Insurance in the amount of 10% of the bid price as a guarantee that the bidder shall not withdraw from the bid process after bids are opened.
- (1) A performance bond issued by a surety company licensed by the Massachusetts State Division of Insurance in an amount equal to 50% of the bid price or contract value as a guarantee against deficient work or default.

D. Competitive Proposals

Conditions for Use. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. Competitive proposals (including turnkey proposals for development) may be used for contracts in excess of \$25,000.00 if there is an adequate method of evaluating technical proposals and where the BHA determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited.

(1) Solicitation. The request for proposals (RFP) shall clearly identify the relative importance of price and other evaluation factors and subfactors, including the weight given to each technical factor and subfactor. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. When a solicitation is subject to M.G.L. C.30B, the evaluation criteria shall be in accordance with M.G.L. C.30B. Proposals will be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the request for proposals. Any proposal in response to a request for proposals shall be considered to the maximum extent practical.

(2) Negotiations. Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with offerors who submit proposals

determined to have a reasonable chance of being selected for award, based on evaluation against the technical and price factors as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposal revisions based on negotiations.

- (1) Award. After evaluation of the proposal revisions, if any, the contract shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the BHA.

- (2) Architect/Engineer Services. Architect/engineer services in the excess of the small purchase limitation (or less if required by State or local law) may be obtained by qualifications-based selection procedures, unless State law mandates the specific method. Sealed bidding, however, shall not be used to obtain architect/engineer services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications-based selection procedures shall not be used to purchase other types of services even though architect/engineer firms are potential sources to perform the proposed effort. BHA specific procedures are described in the Appendices attached hereto.

E. Noncompetitive Proposals

(1) Conditions for Use. Procurements shall be conducted competitively to the maximum extent possible. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies:

(a) the item is available only from a single source, based on a good faith review of available sources;

(b) an emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the BHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event, and will not permit a delay resulting from competitive solicitation. In such cases, there must be an immediate and serious need for supplies, service, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency;

(c) HUD expressly authorizes the use of noncompetitive proposals in response to a written request from BHA; or

(d) after solicitation of a number of sources, competition is determined inadequate.

(1) Justification. Each procurement based on noncompetitive proposals shall be supported by a written justification for using such procedure. The Contracting Officer shall approve the justification in writing.

(2) Price reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing a cost analysis, as described in paragraph III.F. below.

Cost and Price Analysis

- (1) General. A cost or price analysis shall be performed for all procurement actions, including contract modifications. The method of analysis shall be determined as follows. The degree of analysis shall depend on the facts surrounding each procurement, however, as a starting point, BHA shall make independent estimates before receiving bids or proposals.

- (2) Submission of Cost or Pricing Information. If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the BHA (e.g., when contracting for professional, consulting, or architect/engineer services) the offeror shall be required to submit:
 - (a) commercial pricing and sales information, sufficient to enable the BHA to verify the reasonableness of the proposed price as a catalogue or market price of a commercial product sold in substantial quantities to the general public; or
 - (b) documentation showing that the offered price is set by law or regulation.

- (3) Cost Analysis. Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted, a cost analysis shall be performed of the individual cost elements; the BHA shall have a right to audit the contractor's books and records pertinent to such cost; and profit shall be analyzed and negotiated as a separate element of the price for each contract in which there is no price

competition and in all cases where cost analysis is performed. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1), and costs or prices based on estimated costs for contracts are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under 2 C.F.R, Subpart E – Cost Principles (i.e., 2 C.F.R. 200.400 – 200.475). In establishing profit, the BHA shall consider factors such as the complexity and risk of the work involved, the contractor’s investment and productivity, the amount of subcontracting, the quality of past performance, and industry profit rates in the surrounding geographical area for similar work

Price Analysis.

A comparison of prices shall be used in all cases other than those described in IIF.3.2 above.

(a) Cancellation of Solicitations

An Invitation For Bids, request for proposals, or other solicitation may be cancelled before offers are made due if: the BHA no longer requires the supplies, services or construction; the BHA can no longer reasonably expect to fund the procurement; proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or similar reasons.

- (1) A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if: the supplies, services or construction are no longer required; ambiguous or otherwise inadequate specifications were part of the solicitation;

the solicitation did not provide for consideration of all factors of significance to the BHA; prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or for good cause or sound documented reason when it is in the best interest of the BHA.

- (1) The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.
- (2) A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any resolicitation or future procurement of similar items.
- (3) If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the BHA shall cancel the solicitation and either:
 - (a) resolicit using a request for proposals; or
 - (b) complete the procurement by using the competitive proposal method, following paragraphs IID.3. and IID.4. above (when more than one otherwise acceptable bid has been received), or by using the noncompetitive proposals method and following paragraph IIE.2. above (when only one bid is received at an unreasonable price); provided, that the Contracting Officer determines in writing that such action is appropriate, all bidders are informed of the BHA's intent to negotiate, and each responsible

bidder is given a reasonable opportunity to negotiate.

(a) Cooperative Purchasing

With Board of Commissioners approval, the BHA may enter into State and local intergovernmental agreements to purchase or use common or shared goods and services. The decision to use an intergovernmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the intergovernmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The BHA shall use Federal or State excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

CONTRACTOR QUALIFICATIONS

(a) Contractor Responsibility

Contracts shall be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement, including, e.g., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a Contract, the BHA shall review the proposed Contractor's ability to perform the Contract successfully, considering factors such as the Contractor's integrity (including a review of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the U.S. General Services Administration), compliance with public policy, record of past performance (including contacting previous clients of the Contractor, such as other PHAs), and financial and technical resources. If a prospective Contractor is found to be nonresponsible, a written determination of nonresponsibility shall be prepared and included in the Contract file, and the prospective Contractor shall be advised of the reasons for the determination.

(b) Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined

ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) when necessary to protect the BHA in its business dealings.

c Qualified Bidder's Lists

Interested businesses shall be given an opportunity to be included on qualified bidder's lists. Any prequalified lists of person, firms or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure maximum open and free competition. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential Contractors shall include, but not be limited to, such prequalified suppliers.

IV. DISPOSITION OF PROPERTY

- A. All personal property, which is determined to be excess by the Authority, should be disposed of by such methods so as to assure a fair return to the Authority. A bill of sale shall be issued to document every sale.
- B. Personal property determined to be excess may be traded to a vendor with the fair value being used toward the procurement of replacement property. If this method of disposition is used, the trade-in shall be a part of the specifications for the procurement of the replacement property.
- C. If the estimated value of the personal property determined to be excess is less than \$1,000.00, the Procurement Officer or his designee may negotiate a sale after such informal inquiry as he/she considers necessary to ensure a fair return.
- D. Disposition of property determine to have an estimated value between \$1,000.00 and \$5,000.00 shall be done after informal bids are solicited either orally or by telephone or in writing from all known prospective purchasers. All bids shall be documented and filed with the bill of sale.
- E. In offering excess property with an estimated value greater than \$5,000.00 for sale, formal bids shall be solicited in conformance with Section 15, Chapter 30B of the General Laws, Commonwealth of Massachusetts.
- F. Unless prohibited by law, the Board of Commissioners may, by majority vote, dispose of a tangible property no longer useful to the Authority but having resale or salvage value, at less than the fair market value, to a charitable organization which has received a tax exemption from the United States by Reason of its charitable nature.

- G. The Board of Commissioners shall, not less than annually, approve the write-off amounts of all disposed tangible property.

V. TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

A. Contract Types

Any type of Contract which is appropriate to the procurement and which will promote the best interests of the BHA may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurement shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impracticable to satisfy the BHA's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1). A time and materials type Contract may be used only if a written determination is made that no other Contract type is suitable, and the Contract includes a ceiling price that the Contractor exceeds at its own risk. In addition, with respect to time and materials type Contracts, the BHA shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. A "time and materials type Contract" means a contract whose cost to BHA is the sum of: (1) the actual cost of materials; and (2) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

B. Options

Options for additional quantities or performance periods may be included in Contracts, provided that: (i) the option is contained in the solicitation; (ii) the option is a unilateral right of the BHA; (iii) the Contract states a limit on the additional quantities and the overall term of the Contract; (iv) the options are evaluated as part of the initial competition; (v) the Contract states the period within which the options may be exercised; (vi) the options may be exercised only at the price specified in or reasonably determinable from the Contract; (vii) the options may be exercised only if determined to be more advantageous to the BHA than conducting a new procurement; and (viii) if the Contract in question is subject to M.G.L. C.30B, then the

contract must state that all options properly exercised by the BHA must be accepted by the Contractor.

C. Contract Clauses

In addition to containing a clause identifying the contract type, all Contracts shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, including as provided in 2 C.F.R. 200.326 and 2 C.F.R. 200, Appendix II (as set forth in Appendix H to this Policy) , such as or in addition to the following:

1. termination for convenience,
2. termination for default,
3. Equal Employment Opportunity,
4. Anti-Kickback Act,
5. Davis-Bacon Act,
6. contract Work Hours and Safety Standards Act, reporting requirements,
7. patent rights,
8. rights in data,
9. examination of records by Comptroller General, retention of records for three years after closeout,
10. clean air and water,
11. energy efficiency standards,
12. bid protests and contract claims,
13. value engineering (“value engineering” is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost), and
14. payment of funds to influence certain Federal transactions.

The operational procedures required by Section II.A. of this statement shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the BHA. Additional requirements for state procurements are addressed in Section III.D.

Operation Procedures when developed will be maintained as appendices to this policy.

(a) Contract Administration

A contract administration system designed to ensure that Contractors perform in accordance with their Contract shall be maintained. The operational procedures required by Section II.A. above shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring Contractor performance, status reporting on construction Contracts, and similar matters. For cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are consistent with the cost principles in FAR Subpart 31.2

VI. OPERATION PROCEDURES

Operation Procedures when developed will be maintained as appendices to this policy.

VII. SPECIFICATIONS

A. General

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the BHA's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Functional performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see VIII below). For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

The following specification limitations shall be avoided: geographic restrictions not mandated or encouraged by applicable Federal law (except for architect/engineer contracts, which may include geographic location as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications (unless a written determination is made that only the

identified item will satisfy the written determination is made that only the identified item will satisfy the BHA's needs); and brand name or equal specifications (unless it is impractical or uneconomical to make a clear and accurate description of the technical requirements, in which case a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement, provided that the specific features of the named brand which must be met by offers and the minimum essential characteristics and standards to which the item must conform to satisfy its intended use, must be clearly stated). Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the BHA's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

VIII. APPEALS AND REMEDIES

A. General

It is the BHA's policy to resolve all contractual issues informally at the BHA level, without litigation. Disputes shall not be referred to HUD until all administrative remedies have been exhausted at the BHA level. When appropriate, the BHA may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the difference. HUD will only review protests in cases of violations of Federal law or regulations and failure of the BHA to review a complaint or protest. The BHA shall use sound business judgment and good administrative practice in pursuing the settlement of contractual and administrative issues arising out of procurements.

B. Bid Protests

Any actual or prospective Contractor may protest the solicitation or award of a Contract for serious violations of the principles of this Statement. Any protest against the award of a Contract must be received within ten calendar days after Contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Procurement Officer or designee, who shall issue a written decision on the matter. The Procurement Officer may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented.

C. Contract Claims

All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer or his designee for a written decision. The Contractor may request a conference on the claim. The Procurement Officer's decision shall inform the Contractor of its appeal rights to the Executive Director or a designated Board Member, or a Procurement Appeals Board.

IX. ASSISTANCE TO SMALL AND OTHER BUSINESSES

D. Required Efforts

(1) Consistent with Presidential Executive Orders 11625, 12138, And 12432, and Section 3 of the HUD Act of 1968, and 2 C.F.R. 200.321, the BHA

Shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Such efforts shall include, but shall not be limited to:

- (a) including such firms, when qualified, on solicitation mailing lists;
- (b) encouraging their participation through direct solicitation of bid or proposals whenever they are potential sources;
- [c] dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (d) establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- (e) using the services and assistance, as appropriate, of such organizations as the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- (f) including in contracts a clause requiring contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of
- (g) requiring prime contractors, when subcontracting is anticipated, to take the affirmative steps listed in the immediately preceding subclauses D.1.a. through D.i.f.

- (2) Goals may be established by the BHA periodically for Participation by small businesses, minority-owned businesses, women's businesses enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in the area of the project, in the BHA's prime contracts and subcontracting opportunities.

B. Definitions

- (1) A small business is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliated or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used, unless the BHA determines that their use is inappropriate.
- (2) A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, In the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans. Possesses Massachusetts SOWMBA Certification.
3. A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business. Possesses Massachusetts SOWMBA certification.
4. A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.
5. A business concern located in the area of the project is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15, listed on HUD's registry of eligible business concerns,

and meeting the definition of small business above. A business

concern owned in substantial part by persons residing within the area of the project is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project, owned by persons considered by the U.S. Small Business Administration to be socially or economically Disadvantaged, listed on HUD's registry or eligible business concerns, and meeting the definition of small business above.

2. his/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.)

X. ETHICS IN PUBLIC CONTRACTING

A. General.

The BHA shall adhere to the following code of conduct, consistent with applicable State or local law.

B. Conflict of Interest

No employee, officer or agent of the BHA shall participate directly indirectly in the selection or in the award or administration of any Contract if a conflict, real or apparent, would be involved. Such Conflict would arise when a financial or other interest in a firm Selected for award is held by such employee, officer or agent of BHA, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein. Violations of this prohibition, and/or any of the conflict of interest standards set forth in this Policy, shall be subject to discipline, suspension or discharge

C. Gratuities, Kickbacks, and Use of Confidential Information

Contractors shall not retain a person to solicit or secure a BHA contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial.

D. Prohibition Against Contingent Fees

Contractors shall not retain a person to solicit or secure a BHA contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.

XI. PROCURING PROFESSIONAL SERVICES

- A. Methods of Procurement. Professional services must be procured under 2 C.F.R. 200.317 – 200.326. Grantees are expected to choose the method of procurement which is reasonable based on the facts surrounding the particular procurement situation. The methods of procurement outlined in 2 C.F.R. 200.317 – 200.326 are:
- (1) Micro-purchase and Small purchase procedures. Micro-purchase procurement is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of \$10,000. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than \$10,000.00 in the aggregate (although such threshold is higher under federal law, BHA applies the lower threshold set forth under G.L. c. 30B). If micro-purchase or small purchase procurements are used, sound business practices will be used, and price or rate quotations will be obtained from an adequate number of qualified sources.
 - (2) In order to procure services estimated to cost more than \$10,000.00 but less than \$50,000.00, oral or written quotes must be obtained from at least three sources that customarily supply such service, with the names and addresses of persons from whom the quote is obtained, as well as the amount of the quote, being recorded and retained.
 - (3) Sealed bids. The preferred method for procuring construction if the conditions in 2 C.F.R. 200.320(c)(1) and MGL c.149 §44A-J are met. It is normally not appropriate for securing professional services. A firm, fixed price contract award will be made in writing to the lowest responsive and responsible bidder. The regulations (24 CFR 968.240(c) and MGL c.149 §44A-J require sealed bids for procuring construction or equipment.

- (4) Competitive proposals. The method generally preferred when procuring professional services because it allows for the consideration of technical quality or other factors (in addition to price) for securing services estimated to cost more than \$25,000.00. Competitive offers are solicited, proposals are evaluated and award is made to the offeror whose proposal is most advantageous to the BHA, with price and other factors (as specified in the solicitation) considered. Either a fixed price or cost reimbursement type contract may be awarded. This method is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the conditions in 85.36(d)(3) must be followed.

- (5) Noncompetitive proposals. The method of Procurement which occurs when through solicitation or proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. This method may only be used when the other methods of procurement are infeasible and the circumstances described in 85.36(d)(4) are applicable.

- (6) Contracting With a Resident Management Corporation (RMC). While not an optional method of procurement Under 2 C.F.R. 200.317 – 200.326, the BHA may contract with an RMC under provisions of 24 CFR Part 964, for the management of one or more projects. The provisions of 2 C.F.R. 200.317 – 200.326 are applicable to the management contract between the BHA and the RMC. The RMC, when procuring services under the management of one or more projects. The RMC, when procuring services under the management contract, must follow the procurement provisions of OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations. For projects represented by the RMC, the RMC professional services Architectural/Engineer A/E, legal or other, when the estimated cost of the contract is more than \$25,000.00, as set forth in paragraph 8-2 (for A/E services) and Chapter 9 (for other professional services) of the CIAP Handbook 74.85.1 REV-

B. Specific Considerations – Architectural/Engineering and Legal Services

- (1) A/E Services. Normally, small purchase or competitive proposal procedures are used in procuring A/E services. In all cases, the BHA is required to conduct procurements in a manner providing for full and open competition. The BHA is prohibited from procuring services without competition unless the circumstances described in 2 C.F.R. 200.320(f) are applicable. The BHA shall not allow an A/E, on a sole source basis, to prepare an application on a “no fee” basis, and then compensate that A/E by paying a contingent fee or contracting with him/her on a sole source basis to do the design and construction phases. The competitive proposals method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

There are several alternatives available to the BHA in contracting for A/E services:

- (a) A “full service” approach may be used where the BHA solicits offers using competitive proposal procedures for qualification-based selection, as authorized by 2 C.F.R. 200.320(d), for assistance in preparing the CIAP Application and preparing for Joint Review, with options for doing the design and construction phases for a specific CIAP project. The evaluation criteria in the solicitation must address the qualifications and experience of prospective A/E firms for all tasks. The BHA evaluates the proposals for technical competence, selects the best qualified A/E, and negotiates a price for the initial task (CIAP Application/Joint Review) or applicable comprehensive grant, State modernization procedural review. The BHA specifies optional tasks (design/construction) in the contract without a price because the full scope of the A/E services is not yet known. Upon successful completion of the initial task, the BHA pays the A/E the amount specified in the contract.

If the BHA wishes to exercise its option for the additional services, the BHA notifies the A/E accordingly and requests a proposal. The BHA conducts a cost analysis, enters into negotiations and establishes a mutually acceptable price for the design and construction phases. The BHA prepares a contract modification (executed by both parties) which authorizes the A/E to begin the design/construction phase work at the negotiated price. If negotiations cannot be satisfactorily concluded, the BHA has no further obligation to the A/E and may issue a new competitive solicitation.

- (b) If the BHA wishes to procure A/E services for more than one specific service, it may solicit for an indefinite quantity of A/E services. The solicitations must state that the services contemplated are not related to a rehabilitation project in excess of \$25,000.00. Because this approach may provide the successful A/E with a substantial level of business and basically confers status as the “resident A/E,” the contract shall contain a clause precluding the successful A/E from competing on related A/E work solicited by the BHA during the term of the contract if the other A/E work would result in an organizational conflict of interest (e.g., unfair competitive advantage or impairment of contractor objectivity).
- (2) Legal Services. The procurement of legal services shall follow the procedures outlined in paragraph A, above. The employment of House Counsel is not covered by 2 C.F.R. 200.317 – 200.326. House Counsels are ineligible to receive procurement contracts for legal services. All services of House Counsel would be part of his/her employment contract and are not to be procured separately. Where legal services are desired outside of the scope of services provided by the House Counsel, the BHA may use small purchase procedures if the effort is not expected to exceed \$150,000.00 in the aggregate (regardless of the number of years covered by the contract, but not to exceed two years without HUD approval). Normally, if the level of legal services required is expected to exceed the BHA’s small purchase limit, competitive proposals should be used. Noncompetitive proposal may only be used when the other methods of procurement are infeasible, an exceptional case where none of the competitive methods can be used under the circumstances to meet the specific need for required legal services, and when additional circumstances apply; namely, legal services are available from only a single source; public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; after solicitation of a number of sources, competition is determined inadequate; or HUD authorizes the use of noncompetitive proposals (2 C.F.R. 200.320(f)). An example of a situation considered to violate the requirement of full and open competition in 2 C.F.R. 200.317 – 200.326 would be a noncompetitive award to an attorney on a retainer contract.

Contracts for litigation services must meet the requirement of the HUD Litigation Handbook 1530.1 REV-4 dated May 8, 1981 (the “Litigation Handbook”). With the exception of litigation involving the BHA acting as a Section 8 private developer, the BHA must submit to HUD Regional Counsel for prior written concurrence any contract with a private attorney for litigation services involving BHA program, project, or activity receiving loan, grant or subsidy assistance from HUD. If the services are estimated to cost not more than \$25,000.00, this concurrence is not necessary. Such contracts shall make provision for reasonable fees and

reimbursement of necessary expenses. If additional funding or budget revision will be required to cover the cost of litigation services, the BHA shall consult appropriate Field and Regional Offices staff.

No contract for attorney's fees for litigation services entered into by the BHA which calls for an estimated maximum price in excess of \$100,000.00 may be approved by the Regional Counsel without the prior concurrence of the program Associate General Counsel.

Fixed price proposals will be approved only where the issues are uncomplicated, extensive preparation probably is not required, and any trial that may ensue probably will not be lengthy.

- C. Professional Service Contracts. The BHA shall not enter into, execute, or approve, any agreement or contract for professional, management, fee accountants, legal or other services with any person or firm where the initial period or term of the contract is in excess of three (3) years, or where the Contract contains a renewal provision for any period of time, without the written approval of the local HUD Office.

Where an existing Contract contains a renewal provision, automatic or otherwise, which extends the term of the contract for any period, the BHA shall not act to renew or extend such contract, or fail to take any necessary action to forestall automatic renewal or extension, without the prior written approval of the local HUD Office. (See Section 315 of the Terms and Conditions Constituting Part Two of a Consolidated Annual Contributions Contract (CACC)). The fee or amount paid for such contracts will be considered reasonable if it does not exceed the rates prevailing in the locality for the same services required by the BHA. Salary comparability requires documentation on the part of the BHA in determining the salary or fee to be paid and must be submitted to HUD on request.

XII. SANCTIONS

- A. Housing Authority Employees
- (1) Employees who engage in prohibited practices (Section III.c.) or violate the ethics provision (Section IX) of this policy shall be considered to have committed a serious rules infraction in the sense of negotiated agreements, or the Housing Authority Personnel Policy, currently in effect.
2. An employee may be disciplined, suspended or discharged by the Executive Director, or by the Board of Commissioners, whichever is appropriate, for serious rules infractions. Employees subject to Civil Service shall be accorded the protection of applicable acts and may be

separated only in accordance with the provisions of Section 41-45, Chapter 31 of the General Laws of the Commonwealth of Massachusetts.

B. Executive Director, Commissioners

(1) The Executive Director and/or Commissioners shall not engage in prohibited practices (Section II.c.) or violate the ethics provision of Section IX, or take any other action which compels a subordinate or employee to participate in such violations.

(2) When it becomes apparent that such a violation may have occurred an administrative hearing shall be conducted by the Executive Director or by the Board of Commissioners, whichever is appropriate, to determine the facts and circumstances and to make such decision as may be appropriate.

APPENDIX A: CONSTRUCTION PROCUREMENT PROCEDURES

A. Construction/Modernization – Sealed Bids shall be solicited through a formally advertised Invitation for Bids (IFB).

1. Bid Procedures:

(a) Federal:

All specifications shall include a separate bid package consisting of:

Form of General Bid (or Sub-Bid if applicable)
Non-Collusive Affidavit
Revenue Enforcement and Protection Certification (REAP)
Form of Bid Bond
Previous Participation Certification (Form 2530)
Unit Price Form if applicable
Form of Contract
Performance Bond
Payment Bond with Certificate as to Corporate Principal

(b) State:

Bid package shall consist of all items as Federal, as well as:
DCAM Certificate
Bidders Check List
SOWMBA Letter of Intent
SOWMBA Enterprise Participation Schedule

(c) Federal and State:

At bid opening a responsive bid shall include:

Form of General Bid (or Sub-Bid if applicable)
Non-Collusive Affidavit
Form of Bid Bond
Certificate of Eligibility with Contractor Qualifications
Update of Statement (Issued by DCAM)
Unit price form if applicable

(d) Documents to be submitted by low bidder after Bid Opening:

Federal – Within 5 days

Previous Participation Certificate (Form 2530)

State – Within 5 days

SOWMBA Letter of Intent (Projects over \$100,000.00 and not single trade) and SOWMBA Enterprise Participation Schedule

(e) Award and Review:

(1) Subsequent to the Bid Opening the architect and the Modernization Coordinator shall review the bids as to their responsiveness and price ranking. The Architect shall conduct a thorough investigation of references to determine that the low bidder is responsible. The Architect shall provide the Modernization Coordinator with a letter of recommendation based on his findings.

(2) The Modernization Coordinator shall place the award of the contract on the agenda of the next scheduled meeting of the Board of Commissioners provided such a meeting will occur within 30 days of the bid opening. A special meeting will be required if the 30-day period was to be exceeded. If the Board of Commissioners approves the award, said approval shall be contingent on the funding agency's approval.

(3) The Modernization Coordinator shall forward the appropriate contract documents to the funding agency for their review and approval.

Federal – Within 30 days

Form of Contract

Performance of Bond

Payment Bond

Certificates of Insurance (Liability and Workmen's Compensation, and when applicable, Flood, and Builder's Risk Insurance)

Revenue Enforcement and Protection Certificate (REAP)

Contractors Equal Employment Certification

(1) State – Within 30 days

Owner/Contractor Agreement with Form of Corporate Vote

Performance Bond

Payment Bond Certificates of Insurance (Liability and Workmen's Compensation, and when applicable, Flood, and Builder's Risk Insurance)

Contractors Equal Employment Certification
Form of Estimated Progress Payment Schedule
Form of Subcontract – all filed subcontractors, all SOWMBA

1. Construction/Modernization Contracts Procedures:

(a) Preconstruction Meeting

Subsequent to the award of a contract the Contract Officer, or his/her designee, will schedule with the Architect/Engineer, and the regulatory branch of the funding agency, the date of the Preconstruction meeting. The Architect/Engineer shall notify the General Contractor that he is to attend with the project manager and project superintendent, and all filed subcontractors. An agenda shall be issued clearly identifying such procedures as, but not limited to: Notice to Proceed, Communications, Tenant Coordination, weekly site meetings, safety, wage rates, application for payments, submittals, change orders and field orders. Minutes shall be kept and signed by all parties as to the procedures and terms established.

(b) Notice to Proceed

At the Preconstruction meeting the Notice to Proceed shall be issued to the General Contractor. Said notice shall be written and consist of three (3) copies stating the effective start date and completion date in accordance with the number of calendar days contained in the bid documents. Further, said notice shall indicate the names of the Contract Officer and alternate Contract Officer and shall instruct the General Contractor to immediately submit to the Architect a Schedule of Values and a Construction Progress Schedule. Two (2) copies shall be signed by the General Contractor and retained by the Authority, one copy of which will be submitted to the funding agency.

[c] Executed Plans and Specifications

Further, three sets of plans and specifications shall be signed on the first and last page of each by the General Contractor and the Contract Officer, or his/her designee, one copy of which will be retained by the General Contractor. The Authority will retain one copy and submit the other copy to the funding agency.

(d) Site Inspections

The Architect/Engineer shall conduct field inspections a minimum of once per week and shall issue field reports as to findings.

The Modernization Coordinator shall conduct field inspections on a daily basis at random times to prevent an established pattern. The Modernization Coordinator shall confer with the Clerk of the Works to assure that inspections are being performed by that individual, and that required data as to work force, weather and progress is being recorded.

Clerk of the Works shall be employed by the architect but is responsible for maintaining detailed daily records as to the Subcontractor(s), General Contractor work force, weather conditions, construction activity, deliveries and any observed problems or deficiencies. The Clerk shall conduct frequent daily inspections of all aspects of the construction activity and shall report any observed problems or deficiencies in a timely manner to the Architect/Engineer.

(e) Site Meetings

Site meetings will be held on a weekly basis throughout the construction period. These meetings are to be attended by: Architect's Project Manager, Clerk of the Works, General Contractor's Superintendent, Contractor's Project Manager, representatives of all filed subcontractors, Modernization Coordinator, Tenant Coordinator, Tenant Representative and a representative of the development's maintenance staff. During such meetings the architect will keep minutes of all discussions, arrangements and agreements. These minutes will be distributed in a timely manner to each participant so that they may be agreed to or amended at the subsequent meeting.

The architect will review the progress of construction against the Contractor's Progress Schedule. A determination will be made in regard to the contractor's performance and whether manpower levels are sufficient. All requests for payment will be evaluated against the Progress Schedule, Schedule of Values and the contractor's performance.

These meetings shall serve as a means to assure the orderly and timely progression of the construction.

(f) Wage Reviews

The General Contractor shall provide, on a weekly basis, detailed payroll records for all employees of all firms working under his contract. The Modernization Coordinator will review these records on a weekly basis and verify that wages being paid are in compliance

with the wage rates as posted in the specifications. In the case of Federal projects, the Modernization Coordinator shall periodically, on a random basis, conduct wage interviews with a representative sample of the various tradesmen. The information obtained shall be compared to that submitted by the contractor to verify that the individuals are receiving the proper wages.

All wage information shall be maintained in the project records and be available for inspection by the funding agency personnel.

(g) Contractor Applications for Payments

Requests for payment shall be reviewed and approved by the Architect and concurred with by the Modernization Coordinator. Payment shall be made in accordance with the contractor's progress in the field as it relates to the Progress Schedule and Schedule of Values.

Subsequent to the Architect's approval the Modernization Coordinator will forward the Application for Payment to the Assistant Executive Director and monitor its status. Every effort shall be made by the Authority to assure payment within 30 days. Delays that extend payment beyond 30 days can result in the contractor's being entitled to interest on the amount due.

(h) Change Orders

Change orders are to be avoided. In the event that unforeseen conditions necessitate a change in the scope of work, that does not constitute an emergency, the Modernization Coordinator shall work in conjunction with the Architect/Engineer and the contractor to define the required work and determine the proper cost. This will be accomplished by receiving a written proposal for the work from the Contractor which will then be reviewed by the Architect and Modernization Coordinator. A cost analysis will be performed to determine that the price, profit and overhead are fair. Attention must be paid to any restrictions by the funding agency, such as allowable percentage of overhead and profit, and that the Change Order does not exceed 10% of the awarded contract. The Architect shall evaluate the Contractor's proposal against his own estimate, as well as determining that the work could not be accomplished at a lesser amount by soliciting proposals from other contractors. If it is determined that the Contractor's price is excessive, the Architect shall negotiate the cost to the proper amount or failing to reach such agreement shall notify the Modernization Coordinator.

In the event that it is necessary to solicit prices from outside contractors the cost of the change order shall determine the method of solicitation. Prior to initiating such a procedure, the Modernization Coordinator shall secure from the Architect a written summary of the process to date, his opinion as to whether the work involved is of an emergency nature, the estimated delay which will result from obtaining outside quotes and whether the present contractor will be entitled to additional monies as a result of that delay. With this information the Modernization Coordinator shall contact the funding agency for their direction and approval before soliciting outside quotes.

In the event that a suitable price is arranged with the Contractor and it is not necessary to obtain outside quotes, the Architect shall complete the proper Change Order form, signed by him and shall deliver it to the Modernization Coordinator accompanied by his letter of recommendation. The Modernization Coordinator will then place the Change Order on the Agenda for the next meeting of the Board of Commissioners. (If the Change Order is of an emergency nature, a special meeting can be requested.) In the event that the Board disapproves of the Change Order, the Modernization Coordinator must then contact the Architect and Contractor and arrange a suitable solution to the problem by either terminating the work in that area or decreasing the scope of work in other non-priority areas to accommodate the Change Order at no cost. In either case the approval of the funding agency must be obtained.

In the event that the Board of Commissioners approves the Change Order subject to the funding agency's approval, then the Modernization Coordinator shall forward the Change Order, the Architect's letter of recommendation and an Extract of the Board's vote to the funding agency for approval. Subsequent to the receipt of this approval, the Contractor may commence work.

(i) Field Orders

The Architect may issue field orders provided they do not commit the Authority to additional monies, and that any significant changes have been approved by the Modernization Coordinator.

(j) As Built Drawings/Record Drawings

The Clerk of the Works shall assure that all approved deviations from the original plans shall be recorded on a continuous basis to constitute "As Built Drawings."

During the closeout process, the Architect shall secure from the Contractor a record set of plans reflecting all as built conditions. Final payment shall not be processed until the Authority is in receipt of such drawings. In the case of a State project, the Contractor must also supply two (2) microfilm copies of the plans and a mylar transparency set. One set of microfilm shall be sent to the State funding agency.

(k) Operational Manuals

As the project nears completion the Contractor shall provide two (2) sets of operating and maintenance manuals for any and all mechanical systems installed.

(l) Project Files

The Clerk of the Works shall turn over to the Modernization Coordinator all files, including shop drawings, submittals, daily reports, correspondence, test reports, change orders and Application for Payment. These shall be maintained by the Authority for at least six years after final payment.

(m) Liquidated Damages

In the event that the Contractor fails to complete the project within the period specified or as extended by Change Order, the Modernization Coordinator shall instruct the Director of Finance to withhold the appropriate monies as liquidated damages. The Modernization Coordinator shall notify the funding agency of the action.

(n) Contract Closeout

(o) Federal:

When construction is substantially complete the Modernization Coordinator will oversee the Architect's completion of a punch list noting any deficiencies in workmanship or materials. After the Contractor has successfully corrected all items on the punch list, Contract Closeout may be initiated.

The Modernization Coordinator shall contact the representative of the Technical Services branch and arrange a site inspection with that individual, the Architect and the Contractor. During this inspection any deficiencies noted by the Technical Services personnel will be recorded by the Architect and corrected by the Contractor. Following receipt of approval by Technical Services the Modernization Coordinator shall coordinate the execution of five (5) copies of

closeout documents by the Architect and Contractor. These documents are:

Certificate of Completion – Consolidated (Final)
Contractor Certificate and Release
Contractor Warranty
Product Warranty
Application for Payment – Final
Architect’s Letter of Recommendation

The Modernization Coordinator shall place the Contract Closeout on the Agenda of the next meeting of the Board of Commissioners. Subsequent to their approval, the closeout documents, minus the Application for Payment, shall be sent to the Technical Services branch, along with an Extract of their Vote of Approval. Subsequent to the receipt of the funding agency’s approval the Modernization Coordinator shall forward to the Assistant Executive Director a copy of that approval along with the Application for Payment – Final.

(1) State:

When construction is substantially complete (99% or greater) the Architect shall prepare five (5) copies of the Certificate of Substantial Completion with the punch list items attached. The Modernization Coordinator will place this item on the Agenda of the next meeting of the Board of Commissioners. The date listed on the Certificate of Substantial Completion marks the date from which all warranties take effect, as well as the date the Authority assumes responsibility for the project.

The Contractor may request full payment of retainage within 65 days of the date of substantial completion. However, the Authority shall retain sufficient funds to cover any punch list items not completed or any claims or anticipated claims by subcontractors.

If the Contractor has completed the punch list items before the 65 days retention period, the Architect shall arrange a final inspection with the Contractor, the funding agency and the Modernization Contractor. If all deficiencies have been corrected, the Contractor shall prepare five (5) copies of the following documents:

Contractor’s Certificate and Release
Contractor’s Affidavit of Payments of Debts and Claims
Consent of Surety Company to Final Payment
Application for Payment – Final

Upon receipt of these documents in good order, the Architect/Engineer prepares five (5) copies of the Consolidated Certificate of Completion and provides these documents and a letter of recommendation to the Modernization Coordinator to be placed on the Agenda of the next meeting of the Board of Commissioners. A special meeting may be required as under M.G.L. C.30, Section 39K, the Contractor is entitled to interest if payment isn't made within 15 days of the Architect's receipt of the Application for Payment – Final.

Subsequent to the Board's approval the Modernization Coordinator shall forward all documents with an Extract of the Board's Vote of Approval to the funding agency.

If the Contractor has not corrected all deficiencies noted on the punch list, or if there are outstanding claims against the Contractor, instead of the Consolidated Certificate of Completion the Architect should prepare Part 1 of the Certificate of Completion with a list of Exceptions as to the outstanding deficiencies. This list shall assign a sufficient dollar value to each deficiency to cover the cost of repairing or replacing the item(s). The Application for Payment should reflect these monies withheld until resolution. Once all deficiencies are corrected, the Architect shall issue Part 2 of the Certificate of Completion, together with a Certificate of Payment and the Contractor's Certificate and Release. These items are processed as indicated above in the Consolidated Certificate of Completion.

(p) Warranty Inspection

At eleven months the Modernization Coordinator (and Architect for state projects) shall conduct an investigation and review of the project. Any deficiencies or needed repairs pertaining to work performed by the Contractor(s) shall be noted and the Contractor shall be requested, in writing, to make the necessary repairs.

In the event that the Contractor fails to make the requested repairs, and the one-year warranty is about to expire, the Modernization Coordinator shall notify the funding agency and the Contractor's bonding company.

(q) Force Account Labor: The BHA shall seek HUD approval prior to the use of force account labor.

(r) Tenant Relocation: The BHA shall reimburse (or pay) residents for actual, reasonable moving costs in accordance with the Uniform Relocation Act, where applicable.

APPENDIX B: PROCUREMENT PROCEDURES FOR ARCHITECT AND ENGINEER SERVICES

1. Selection

(a) Federal:

Architect/Engineer Contracts shall be solicited on a competitive basis. Upon selection of finalists they shall be ranked in order. Negotiations regarding fee shall commence with the first ranked firm and shall be based on a Memorandum of Understanding in which the scope of work is outlined. If negotiations are successful the award of the Contract shall be submitted to the Board of Commissioners, and then to the funding agency for approval. If a satisfactory fee agreement cannot be reached with the first ranked firm the Modernization Coordinator will notify that firm in writing and will commence negotiations with the second ranked firm. Negotiations will progress in order of ranking until an agreement is reached.

(b) State:

Designer Selection procedures via funding agency Amendments.

(c) Amendments

Amendments are to be avoided. In the event that extra services are required due to increase in scope of work or Contractor Change Order, the Architect/Engineer must notify the Authority, per Contract, and submit a written proposal which shall be in accordance with the staff rates noted in the contract. The Modernization Coordinator shall review the proposal, along with the Contract Officer, and if in agreement shall submit the Amendment to the Board of Commissioners for approval, subject to the funding agency's approval.

(d) Inspections

The Modernization Coordinator shall assure that the Architect/Engineer is performing weekly field inspections and submitting reports as to findings. Further, it shall be verified that communication between the Architect and the Clerk of the Works is being maintained.

(e) Weekly Meetings

The Modernization Coordinator shall assure that the Architect/Engineer is attending weekly site meetings and is recoding and distributing minutes to all attendants. These meetings will also serve to verify that the Architect/Engineer is processing the Contractor's submittals, shop drawings and payment request in a timely manner.

(f) Application for Payments

The Modernization Coordinator shall review all payment applications to verify they are in accordance with the terms of the Contract and the progress of the project. The Modernization Coordinator shall forward approved applications to the Assistant Executive Director for approval and processing through the Director of Finance.

(g) Contract Closeouts

The Modernization Coordinator shall assure that final payment is not processed until construction is completed and the Contractor Closeout documents have been approved by the Board of Commissioners and processed by the funding agency.

APPENDIX C: SMALL PURCHASE PROCEDURES

1. For purchases in amounts less than \$10,000.00:
 - (a) The Authority shall maintain a list of vendors who are of sound reputation and who will accept purchase orders (P.O./invoice billing).
 - (b) Requirements will be identified by type, performance specification, brand name or equivalent, quantity, and urgency of need. Emergency maintenance supplies required to alleviate an immediate code violation or safety hazard may be approved for purchase by a maintenance foreman. Non-emergency requirements will be communicated to the Maintenance Purchasing Agent for facilities related requests, or the Finance Department for administrative requests.
 - c The Purchasing Agent or Finance Department staff will place an order to fill non-emergency requirements with a vendor on the BHA's vendor list. A purchase order citing full description and appropriate end application by project shall be issued by the Purchasing Agent or Finance Department. Purchase orders will be reviewed and countersigned by a designated procurement officer.
 - (d) Billing invoices, shipping/receipt invoice, and purchase orders will be forwarded to the Finance Department for consolidation. Invoices and purchase orders will be reviewed by a member of the Board of Commissioners and paid monthly subject to Board approval.
- (2) For purchases in amounts from \$10,000.00 to \$50,000.00:
 - (a) Except for petty cash purchases, all purchases require the prior approval of the Executive Director or his designee.
 - (b) Price quotes will be solicited from at least three (3) sources in accordance with the procedures in III.B.4. above. Company name, contact, and quote will be recorded and retained on file for all quotes obtained.
 - [c] A written Contract is required when the aggregate value of a supply and/or service purchase exceeds \$10,000.00. A sample "work for hire" agreement is at Appendix D.
 - (d) All other procedures will be as noted above.

- (3) Receipt of supplies or materials: Receipt procedures shall be in accordance with the Authority's Inventory Control Policy.
- (a) Receipt invoices will be signed by the BHA employee who takes physical custody of the items from a vendor/shipper. Obviously damaged goods will not be accepted.
 - (b) Packages will be opened and contents inspected visually for completeness or damage.
 - [c] The receipt invoice will be forwarded to the Purchasing Agent for annotation of P.O. number and comparison to P.O. quantity and specification. The annotated invoice will be forwarded to the Finance Department for their accounts payable record.

Items found to be defective at a later date (e.g., appliances) will be reported to the Maintenance Department for corrective action. Upon such notification, the Director of Maintenance will seek warranty or other relief as appropriate.

(e) Petty Cash

For purchases in the amount of \$50.00 or less petty cash may be used. A descriptive receipt will be provided to the petty cash cashier (Finance Department) and a petty cash voucher will be executed in order to obtain reimbursement. The Director of Finance may authorize disbursement in advance.

(4) Purchase Orders

All small purchases shall be made on automated purchase orders using the Authority's purchasing and inventory software. Payment shall not be made to vendors except on approved purchase orders.

APPENDIX D: WORK FOR HIRE AGREEMENT

AGREEMENT

This Work for Hire Agreement (this “Agreement”) is made effective as of _____, by and between Brockton Housing Authority of P.O. Box 7070, 45 Goddard Road, Brockton, Massachusetts 02303-7070.

In this Agreement, the party who is contracting to receive services shall be referred to as “the Authority,” and the party who will be providing the services shall be referred to as “the vendor.”

1. DESCRIPTION OF SERVICES: Beginning on _____, the vendor will provide the following services, (collectively the “Services”):

All work shall be completed not later than _____. After that date liquidated damages of \$200.00 per day shall apply for work not completed.
2. PAYMENT FOR SERVICES: The Authority will pay compensation to the vendor for the Services in the amount of \$ _____. This compensation shall be payable in a lump sum within fifteen days after completion and acceptance of work. Payment is subject to appropriation and approval of the Commissioners of the Authority.
3. TERM/TERMINATION: This Agreement may be terminated by either party upon 10 days written notice to the other party.
4. WORK PRODUCT OWNERSHIP: Any copyrightable works, ideas, discoveries, inventions, patents, products, or other information (collectively, the “Work Product”) developed in whole or in part by the vendor in connection with the Services shall be the exclusive property of the Authority. Upon request, the vendor shall sign all documents necessary to confirm or perfect the exclusive ownership of the Authority to the Work Product.
5. PREVAILING WAGE: N/A
6. PAYMENT AND PERFORMANCE BONDS: N/A
7. INSURANCE: The vendor is responsible for providing liability and workers compensation insurance coverage, and agrees to indemnify the Authority against loss.
8. AMENDMENTS: Any amendments to this agreement must be in writing and signed by parties having authority to bind the parties.

9. ASSIGNMENT: N/A
10. CONFLICT OF INTEREST: Activity that would constitute a conflict of interest under Massachusetts General Laws Chapter 268A is prohibited.
11. TAX COMPLIANCE: The vendor certifies that he/she has complied with all tax code provisions as required by Massachusetts General Laws Chapter 62C, §49A.
12. CONFIDENTIALITY: The vendor will not at any time or in any manner, either directly or indirectly, use for the personal benefit of the vendor, or divulge, disclose, or communicate in any manner any information that is proprietary to the Authority. The vendor will protect such information and treat it as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon termination of this Agreement, the vendor will return to the Authority all records, notes, documentation and other items that were used, created, or controlled by the vendor during the term of this Agreement.
13. ENTIRE AGREEMENT: This Agreement contains the entire Agreement of the parties, and there are no other promises or conditions in any other Agreement whether oral or written.
14. SEVERABILITY: If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

Brockton Housing Authority

By: _____
Executive Director
Brockton Housing Authority

VENDOR

By: _____

This Summary is not an official part of your document. It contains highlights of the important information that has been entered into the document.

SUMMARY
of the
WORK FOR HIRE AGREEMENT

DATE AGREEMENT WAS SIGNED: _____

SERVICES CONTRACTED BY
Brockton Housing Authority

SERVICE PROVIDER

DATE SERVICES BEGIN

SERVICES

PAYMENT
\$0.00

TOTAL

PAYMENT

APPENDIX E: INSTRUCTIONS TO OFFERORS RECOMMENDED FOR USE IN NON-CONSTRUCTION CONTRACTS

1. Offer Preparation and Submission

- (a) Offerors are expected to examine the statement of work, specifications, drawings, and all instructions. Failure to do so will be at the offeror's risk.

- (b) All proposals must be submitted on the forms provided by the Brockton Housing Authority (BHA). Each offeror shall furnish all the information required by the solicitation. Offerors must submit one original signature proposal and one copy. (Offerors should retain an additional copy for their records.) Original proposals must be signed and the offeror's name typed or printed on the proposal and each continuation sheet which required the entry of information by the offeror. Erasures or other changes must be initialed by the person signing the bid. Proposals signed by an agent shall be accompanied by evidence of that agent's authority.

- (c) All proposal documents shall be sealed in an envelope which shall be clearly marked with the words "Proposal Documents," the Request for Proposals (RFP) number, any project or other identifying number, the offeror's name, and the date and time of solicitation closing.

- (d) If this solicitation requires proposing on all items, failure to do so will disqualify the proposal. If proposing on all items is not required, offerors should insert the words "NO PROPOSAL" in the space provided for any item on which no price is submitted.

- (e) Unless expressly authorized elsewhere in this solicitation, alternate proposals will not be considered.

- (f) Unless expressly authorized elsewhere in this solicitation, proposals submitted by telegraph or facsimile (fax) machine will not be considered.

- (g) If the proposed Contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart D) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the procurement is provided as an attachment to this solicitation.

- (h) Proposals will not be publicly opened, but shall be kept confidential until Contract award.

2. Explanation and Interpretations to Prospective Offerors

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, specifications, drawings, etc., must request it in writing soon enough to allow the BHA time to provide a reply to all prospective offerors before the submission of their proposals. No oral explanation or interpretation will be provided to any offeror. Any information given a prospective offeror concerning this solicitation will be furnished promptly to all other prospective offerors as a written amendment to the solicitation, if that information is necessary in submitting proposals or if the lack of it would be prejudicial to other prospective offerors. Amendments will also be on file in the offices of the BHA at least seven (7) days before the closing date. All offerors will be bound by such amendments, whether or not they are received by the offerors.

(b) Any information obtained by, or provided to, an offeror other than by formal amendments to the solicitation shall not constitute a change to the solicitation.

3. Responsibility of Prospective Contractor

(a) The BHA will award Contracts only to responsible prospective Contractors who have the ability to perform successfully under the terms and conditions of the proposed Contract. In determining the responsibility of an offeror, the BHA will consider such matters as the offeror's:

- (1) Integrity;
- (2) Compliance with public policy;
- (3) Record of past performance; and
- (4) Financial and technical resources (including computer and technical equipment).

(b) Before a proposal is considered for award, the offeror may be requested by the BHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the offeror to provide such additional information shall render the offeror ineligible for award.

4. Late Submissions and Modifications of Proposals

(a) Any proposal received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the BHA that the late receipt was due solely to mishandling by the BHA after receipt at the BHA; or
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service – Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term “working days” excludes weekends and U.S. Federal holidays.

(b) Any modification of a proposal is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper is on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal or modifications shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull’s eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the BHA is the time/date stamp of BHA on the proposal wrapper or other documentary evidence of receipt maintained by the BHA.

(e) The only acceptable evidence to establish the date of mailing a late proposal or modification sent by Express Mail Next Day Service - Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service – Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph c. of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that make its terms more favorable to the BHA will be considered at any time it is received and may be accepted.

(g) Proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the offeror is mailed and postmarked prior to award. A proposal may be withdrawn in person by an offeror or its authorized representative if, before the award, the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal.

5. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective offeror whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

- (b) Protests, as defined in paragraph (a) above, shall be served on the Contracting Officer by obtaining written and dated acknowledgment from _____ [Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.]
- [c] All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the BHA.

6. Contract Award

(a) The BHA will evaluate proposals and award a Contract to the responsible offeror whose proposal will be most advantageous to the BHA, considering price and any other factors specified in the solicitation.

(b) The BHA may reject any and all proposals, accept other than the lowest proposal, and waive informalities or minor irregularities in proposals received.

(c) Unless precluded elsewhere in the solicitation, the BHA may accept any item or combination of items proposed.

(d) The BHA may reject any proposal as unacceptable if it is materially unbalanced as to the prices for the various items of work to be performed. A proposal is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(e) A written award shall be furnished to the successful offeror within the period for acceptance specified in the proposal and shall result in a binding Contract without further action by either party.

APPENDIX F: RECOMMENDED GENERAL CONDITIONS OF THE CONTRACT (NON-CONSTRUCTION)

CONDUCT OF WORK

1. Definition

(a) “Contract” means the contract entered into between the BHA and the contractor. It includes the Certification, Representations, and Other Statements of Offerors (Form HUD-), these General Conditions of the Contract for Computers, any special conditions included elsewhere in the Contract, the specifications, and the schedule of drawings. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.

(b) “Contracting Officer” means the person delegated the authority by the BHA to enter into, administer, and/or terminate this Contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the BHA in all dealings with the Contractor.

(c) “Contractor” means the person or other entity entering into the Contract with the BHA to perform all of the work required under the Contract.

(d) “HUD” means the United States Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC) to provide financial assistance to the BHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the Contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the BHA for payment to the Contractor. Notwithstanding HUD’s role, nothing in this Contract shall be construed to create any contractual relationship between the Contractor and HUD.

(e) “BHA” means a Public Housing Agency or Indian Housing Authority organized under applicable state or tribal law. It shall refer to either the Public Housing Agency or Indian Housing Authority which is a party to this contract.

(f) “Work” means materials, workmanship, and manufacture and fabrication of components.

2. Contractor’s Responsibility for Work

(a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work.

(b) At all times during performance of this Contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(c) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor’s fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the BHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor’s performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(d) The Contractor shall confine all operations (including storage of materials) on BHA premises to areas authorized or approved by the Contracting Officer.

(e) The Contractor’s responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the guaranty.

3. Clean Air and Water (Applicable to Contracts in Excess of \$100,000.00)

(a) Definition. “Facility” means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the

Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

(b) The Contractor agrees:

(1) To comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR Part 15);

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use the best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and

(4) To insert the substance of this clause in all nonexempt subcontracts, including this subparagraph b.4.

(4) Inspection and Acceptance

The contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to BHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

BHA inspections and tests are for the sole benefit of the BHA and do not (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the BHA after acceptance of the completed work.

The BHA has the right to inspect and test all supplies, services, and construction required under this contract to the extent practicable at all times and places during the term of the contract. The BHA shall perform inspections in a manner that will not unduly delay the work. If any of the supplies, services, or construction do not conform with contract requirements, the BHA may require the Contractor to perform the work again in conformity with contract requirements, at no increase in the contract price. When defects cannot be corrected by reperformance, the

BHA may require the contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of the work performed. If the Contractor fails to perform promptly the required work or to take the necessary action to ensure future performance of the contract in conformity with contract requirements, the HA may, by contract or otherwise, perform the work itself and charge the Contractor any cost incurred that is directly related to the performance of the work or terminate the contract for default.

The presence or absence of the BHA Inspector does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.

5. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other perform, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

6. Warranty

The equipment provided under this contract shall have a warranty of _____(years/months).

7. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's/IHA's property. This prohibition shall apply to all subcontractors.

8. Energy Efficiency

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163) for the State in which the work under the contract is performed.

Administrative Requirements

9. Contract Period

The Contractor shall complete all work required under this Contract within _____(days/months) of the effective date of the Contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

10. Order of Precedence

In the event of a conflict between these General Conditions and the Statement of Work, the provisions of the General Conditions shall prevail. In the event of a conflict between the Contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail.

11. Payments

(a) The BHA shall pay the Contractor the price as provided in this Contract.

(b) The BHA shall make the final payment due the Contractor under this Contract after (1) completion and acceptance of all work; and (2) presentation of release of all claims against the BHA arising by virtue of this Contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this Contract has been assigned.

10. Contract Modifications

(a) Only the Contracting Officer has authority to modify any term or condition of this Contract. Any Contract modification shall be authorized in writing.

(b) The Contract BHA may modify the Contract unilaterally – (1) pursuant to a specific authorization stated in a Contract clause (e.g., CHANGES); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the BHA address). All other Contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

11. Changes

- (a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the Contract including changes:
 - (1) In the statement may, at any time, without notice to the sureties, By written order designated or indicated to be a change order, make changes in the work within the general scope of the Contract including changes.
 - (2) In the method or manner of performance of the work;
 - (4) Directing the acceleration in the performance of the work.
- (b) Any other written order or oral order, (which, as used in this paragraph includes (b), includes direction, instruction, interpretations, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this cause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- [c] Any other written order or oral order (which, as used in this paragraph b., includes direction, instruction, interpretations, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this cause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- (d) Except as provided in this clause, no order, statement or conduct of the Contracting Officer or any other person shall be treated as a change under this paragraph or entitle the Contractor to an equitable adjustment.
- (e) If any change under this paragraph causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this Contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the Contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under this paragraph (b) above shall be allowed for any costs incurred more than 30 days before the Contractor gives written notice as required. In the case of defective specifications for which the BHA is responsible, the equitable

adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

- (f) The Contractor must submit any proposal under this paragraph to the Contracting Officer within 30 days after (1) receipt of a written change order under subparagraph (a) above, or (2) the furnishing of a written notice under subparagraph b. above. The proposal shall include a written statement describing the general nature and the amount of proposal. If the facts justify it, the Contracting Officer may extend the period of submission. The proposal may be included in the notice required under subparagraph (b) above. No proposal may be included in the notice required under subparagraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

- (g) The Contractor's written proposal for equitable adjustment shall be submitted in the following form:
 - (1) Proposals totaling \$5,000.00 or less shall be submitted in the form of a lump sum proposal with supporting information to _____ clearly relate elements of cost with specific items of work involved to the satisfaction of the Contracting Officer.

 - (2) For proposals in excess of \$5,000.00, the claim for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:
 - (i) Direct Costs
 - Materials;

 - Transportation and delivery costs associated with materials;

 - Labor breakdown by hours or unit (identified with specific work to be performed);

 - Costs of preparation and/or revision to shop drawings resulting from the change;

 - Worker's Compensation and Public Liability Insurance;

 - Employment taxes under FICA and FUTA; and

Bond Costs – when size of change order warrants revision.

- (ii) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits and normally treated as direct costs.
- (iii) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent and complexity of the work required by the change.

The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this Contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the Contract, the application of indirect costs and profit shall be on the net change in direct costs for the Contractor or subcontractor performing the work.

- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the Contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt.
- (i) Failure to reach an agreement on any proposal shall be a dispute under clause 30, DISPUTES herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior written order from the Contracting Officer.

13. Suspension of Work

- (a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the BHA.

- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.
- [c] A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

14. Disputes

- (a) All disputes arising under or relating to this contract (including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b). All claims by the Contractor shall be made in writing and submitted to the Contracting Officer. A claim by the BHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- [c] The Contracting Officer shall, with reasonable promptness, but in no event in no more than _____ days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the Contracting Officer's decision, shall notify the Contracting Officer in writing that it takes exception to such decision, the decision shall be final and conclusive.

- (d) Provided the Contractor has (1) given the notice within the time stated in paragraph c. above, and (2) excepted its claim relating to such decision from the final release, and (3) brought suit against the BHA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the BHA that it submit a final voucher and release, whichever is earlier, then the Contracting Officer's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.
- (f) The Contractor is prohibited from placing a lien on the PHA's/IHA'S property. This prohibition shall apply to all subcontractors.

15. Default

- (a) If the Contractor refuses to prosecute the work, or any separable part thereof, with the diligence that will ensure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to proceed with the work or (separable part of the work) that has been delayed. In this event, the BHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work as necessary for completing the work. The Contractor and its sureties shall be liable for any damages to the BHA resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the BHA in completing the work .

- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if:
- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the BHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the BHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any time arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
 - (2) The Contractor, within _____ days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of clause 30, DISPUTES herein.
- [c] If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for the convenience of the BHA.

16. Liquidated Damage

- (a) If the Contractor fails to complete the work within the time specified in the Contract, or any extension, as specified in the clause 31, DEFAULT of this Contract, the Contractor shall pay to the BHA as liquidated damages, the sum of \$_____ for each day of delay. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the BHA. The Contractor remains liable for damages caused other than by delay.
- (b) If the BHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the BHA in completing the work.
- [c] the BHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

17. Termination For Convenience

- (a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is the best interest of the BHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.
- (b) If the performance of the work is terminated, either in whole or in part, the BHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination which costs shall be paid to the Contractor within 90 days or receipt by the BHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of the work performed to date of termination less the total amount of Contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has been made by the BHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the BHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the BHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.

[c] Any disputes with regard to this clause are expressly made subject to the provisions of clause 30, DISPUTES herein.

18. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract, except that claims for monies due or to become due from the BHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this Contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

19. Subcontracts

- (a) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the State in which the work under this Contract is to be performed.
- (b) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts of omissions of persons directly employed by the Contractor.
- (c) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this Contract insofar as they are applicable to the work of subcontractors.
- (d) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the BHA, or between the subcontractor and HUD.

20. Subcontracting with Small and Minority Firms, Women's Business Enterprise, And Labor Surplus Area Firms

The Contractor shall take the following steps to assure that, whenever possible, subcontracts are awarded to minority firms, women's business enterprises, and labor area firms:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Assuring the small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

- [c] Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and state and local governmental small business agencies.

21. Equal Employment Opportunity

- (a) During the performance of this Contract, the Contractor agrees as follows:
The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.
- [c] The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (j) Compliance with the requirements of this clause shall be to the maximum extent consisting with, but not in derogation of, compliance with Section 7(b) of the Indian Self-Determination and Education Assistance Act and clause 36, INDIAN PREFERENCE HEREIN.

22. Equal Opportunity for Businesses and Unemployed and Underemployed Persons (HUD Act of 1968, Section 3)

- (a) In accordance with Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, the Contractor shall, to the maximum extent practicable.
 - (1) Providing training and employment opportunities to the unemployed and underemployed residents of the unit of local government or the metropolitan area (or non-metropolitan county) in which the project is located; and
 - (2) Award Contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons

residing in the same metropolitan area or non-metropolitan county as the project.

- (b) The Contractor shall insert or cause to be inserted this same provision in each construction subcontract.

23. Indian Preference (Applicable in contracts awarded by Indian Housing Authorities for projects owned or controlled by Indian Housing Authorities)

- (a) The work to be performed under this Contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)(b)). Section 7(b) requires that to the greatest extent feasible (1) preference and opportunities for training and employment shall be given to Indians, and (2) preferences in the award of Contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprise.

- (b) The parties to this Contract shall comply with the provisions of Section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)(b)) and all HUD requirements adopted pursuant to Section 7(b).

- [c] In connection with this Contract, the parties shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned Economic Enterprises, and preferences and opportunities for training and employment to Indians.

- (d) This Section 7(b) clause shall be incorporated into every subcontract in connection with the project.

- (e) Upon a finding by the BHA or HUD that any party to this contract is not in compliance with the Section 7(b) clause, said party shall, at the direction of the IHA, take appropriate remedial action pursuant to the contract

25. Interest of Members, Officers, or Employees and Former Members,

No member, officer, or employee of the BHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the BHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

26. Limitations on Payments Made to Influence Certain Federal Financial Transactions

- (a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code, which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement, or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (c) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.
- (d) Indian tribes (except those chartered by States) and Indian Organizations as defined in section 4 of the Indian Self-Determination And Education Assistance Act (25 U.S.C. 450B) are exempt from the Requirements of this clause.

27. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the BHA harmless from loss on account thereof; except that the BHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

28. Rights in Data and Copyrights

Except as provided elsewhere in this clause, the HA shall have unlimited rights in data first produced in the performance of this contract; form, fit, and function data delivered under this Contract; data delivered under this Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or finished for use under this Contract; and all other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software.

The Contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.

For data first produced in the performance of this Contract, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The Contractor grants the HA and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the HA.

The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this Contract any data not first produced in the performance of this Contract and which contains copyright notice, unless the Contractor identifies such data and grants the HA license of the same scope as identified in the preceding paragraph.

The HA agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this Contract are improperly marked, the Contracting Officer may either return the data to the Contractor, or cancel or ignore the markings.

The Contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the Contractor's obligation under this contract.

Notwithstanding any provisions to the contrary contained in any Contractor's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such agreement has been proposed prior to the award of this contract or the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the Contractor agrees that the HA shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease or licensing agreement, shall be subject to the following procedures.

The restricted computer software delivered under this Contract may not be used, reproduced, or disclosed by the HA except as provided below or as expressly stated otherwise in this contract. The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any HA location to which such computer(s) may be transferred; used or copied for use in or with back-up computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives) or back-up purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this Contract; and used or copied for use in or transferred to a replacement computer.

29. Examination and Retention of Contractor's Records

- (a) The BHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this Contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.00.
- [c] The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the clause above titled DISPUTES, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the BHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

APPENDIX G: REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS RECOMMENDED FOR USE IN (NON-CONSTRUCTION CONTRACTS)

1. Contracts of Independent Price Determination

- (a) The offeror certifies that --
- (1) The prices in this proposal have been arrived at independently without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit a proposal, or (iii) the methods or factors used to calculate the prices offered;
 - (2) The prices in this proposal have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
 - (3) No attempt other concern to submit or not to submit a bid for the purpose of restricting competition.
- (b) Each signature on the proposal is considered to be a certification by the signatory --
- Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(n) through (a)(3) above; or
- 2(i) Has been authorized, in writing, to act as an agent for the following principals in certifying that those principals have not participated, and will not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

_____ *[Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];*

(ii) As an authorized agent, does certify that the principals named in subdivisions (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

[c] If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its proposal a signed statement setting forth in detail the circumstances of the disclosure.

[] *[Contracting Officer check if following paragraph is applicable]*

(d) Non-collusive affidavit. applicable to contracts for construction and Equipment exceeding \$50,000.00)

(1) Each offeror shall execute, in the form provided by the BHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful offeror did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid non-responsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [] is, [] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision.

"Bona fide employee" means a person, employed by an offeror and Subject to the offeror's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a BHA employee or officer to give consideration or to act regarding a BHA Contract on any basis other than the merits of the matter.

(b) The offeror represents and certifies as part of its proposal that, except for full-time bona fide employees working solely for the offeror, the offeror:

(1) [] has, [] has not employed or retained any person or company to solicit or obtain this Contract; and

(2) [] has, [] has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this Contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this Contract.

[c] If the answer to either (a)(1) or (a)(2) above is affirmative, the offeror shall make an immediate and full written disclosure to the BHA.

(d) Any misrepresentation by the offeror shall give the BHA the right to (1) terminate the Contract; (2) at its discretion, deduct from Contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the Contract.

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000.00)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its proposal, hereby certifies to the best of His or her knowledge and belief as of December 23, 1989, that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a Contract resulting from this solicitation;

or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

[c] By the submission of this proposal, the offerer certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services

under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the Contract.

- (d) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontracts for specific time periods) prior to entering into subcontracts which exceed \$10,000.00 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will –
- (1) Obtain identical certifications from the proposed subcontractors;
 - (2) Retain the certifications in its files; and
 - (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF
REQUIREMENT FOR CERTIFICATIONS OF
NONSEGREGATED FACILITIES**

A Certification of Non-Segregated Facilities must be submitted Before the award of a subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime Contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

BROCKTON HOUSING AUTHORITY

INVENTORY CONTROL POLICY

- I. PROCUREMENT:** Sound business practice dictates that property, supplies, and equipment must be accounted for in their acquisition and disposition and that accurate records should be maintained to reflect their procedures to ensure proper control of the property, supply and equipment inventory within the Brockton Housing Authority.
- II. POLICY:** All property, supplies and equipment acquired by the Brockton Housing Authority are to be used only in the conduct of the official business of the Authority and shall not be converted to personal use. Employees of the Authority will exercise reasonable care in the receipt, storage, issue, use and disposition of Authority property, supplies and equipment so as to safeguard against loss, theft, or misuse.
- III. APPLICABILITY:** This policy shall apply to all employees, contractors, or agents of the Brockton Housing Authority.
- IV. RESPONSIBILITY:**
1. The Commissioners of the Brockton Housing Authority shall set forth the inventory policy of the Authority and shall provide oversight in its implementation.
 2. The Executive Director shall have executive management responsibility for the development and implementation of inventory control policy and Procedures.
 3. The Director, Office of Administration and Finance shall maintain Accounting and financial records of inventory.
 4. The Director, Office of Economic Development and Real Estate Management (ED/REM) shall manage the physical inventory of capital assets, maintenance supplies and equipment, and vehicles; and shall manage the central warehouse/satellite warehouse and automated inventory systems. The Director of ED/REM shall be the staff proponent responsible for Developing inventory practices and procedures and for this policy.
- V. DEFINITIONS:**
- Bar Code:** A pattern of wide and narrow printed bars that when scanned by laser light may be read as information providing item description and inventory stock number. The bar code is used for physical inventory control purposes and to record receipts and issues.

Inventory Master File: The master database file of all inventory items.

Item Number: An identifying number for a specific item. This number when combined with the class code fully identifies the item in the inventory master file.

MIS: “Management Information Systems.” The automated management information network in use by the Authority including computers, printers, modem devices, scanners and software.

Order – Ship Time: Pipeline time between date of order and date when vendor’s shipment arrives at the Authority.

Packing Slip: The shipment lading bill or other document packed by the vendor or affixed to the shipping container.

Physical Inventory: A recorded physical count of supplies, equipment or property on hand at a certain date.

Purchase Order: Document used to authorize the expenditure of Authority funds for the acquisition of supplies, equipment, property, or services.

Purchasing Agent: Employee responsible for management of the central warehouse, and for purchase, receipt, storage, issue, and disposition of most supplies, equipment and property used by the Authority. Also maintains the automated inventory master file and capital asset records.

Red Flag: When an inventory quantity on hand falls below its reorder point the item is “Red Flagged” to alert the purchasing agent to the need for reorder.

Reorder Point: The stockage level quantity considered to be the lowest quantity to allow the Authority to safely continue operation uninterrupted while waiting for resupply. When inventory on hand reaches the reorder point a “Red Flag” notification occurs which triggers reorder.

Safety Level: Quantity in inventory to satisfy demand during the order – ship time period.

Satellite Warehouse: A storage location at a development property where supplies and equipment to support the minimum essential needs of that development are stored. Only a small amount of inventory will be stocked at each satellite warehouse.

Stock Number: The class code and item number combined. The stock number is used to identify items in inventory.

Vendor: A supplier of goods or services.

3. **Issues from Inventory:** Issues from central warehouse inventory to resupply the vacancy teams, preventive maintenance and satellite locations will be made on a weekly basis, or more often if needed.
 - a. Issues will be made only in response to written requests. Team maintenance leaders and mechanics responsible for satellite sites will forward resupply orders to the purchasing agent each week. Orders will be filled from the resupply request lists and delivered to each team or satellite site in accordance with a schedule to be established by the purchasing agent, maintenance leaders and mechanics.
 - b. Issues from the central warehouse will be posed to the Inventory Master File As having been shipped to satellite locations, except for consumable/expendable supplies which will be considered consumed and expensed when issued from the central warehouse.
 - c. Returns to central inventory. When an item is returned from a satellite location to the central inventory a return transaction will be completed by the purchasing agent updating the Inventory Master File.
 - d. Issues from satellite locations will occur as supplies and materials are consumed or installed in apartment units or common areas. Such issues will be reported on work orders in the Authority's automated work order system.
 - e. Whenever a capital asset is moved or disposed of (see below) a record of the change in capital asset location will be forwarded to the Finance Department for posting to appropriate accounting records.
4. **Disposition:**
 - a. Capital assets will only be disposed of with the approval of the Commissioners following the procedures set forth in the Authority's Procurement Policy.
 - b. Authority property will not be converted to the personal use of any employee, office of the Authority or other person except as provided for by law or regulation.
5. **Physical Inventories:** Records of all inventories will be forwarded to the Finance Department for posting to accounting records and for retention in the Authority's central files. A copy will be retained at the central warehouse.

- a. Capital Assets. Capital assets that are physically located in apartment units will be inventoried at the time of the annual unit inspection and whenever a vacancy or tenancy occurs. Records of such inventory will be made on the inspection form noting the capital asset identification number(s) and item description. All other capital assets will be physically inventoried at year end.
 - b. Periodic Inventories. A sample of ten percent (10%) of all line items in storage at the central warehouse will be inventoried each month as a quality control test for inventory and master file accuracy. Sample inventories will be conducted at satellite locations on a quarterly basis.
 - c. Ending Inventory: A 100% inventory of physical count will be conducted at year end for the central warehouse and all satellite locations.
- 6. Security and Loss Control:** Supplies and equipment in inventory are subject to loss.
- a. Access to the central warehouse shall be by authorized personnel only. The warehouse shall be controlled by electronic lock security and shall have a controlled access area for highly pilferable items which shall be further controlled by double lock security. Security alarms shall be set at the close of business prior to securing the building. Security of the central warehouse shall be responsibility of the purchasing agent. Security of team and satellite storage locations shall be the responsibility of the appropriate maintenance leader or mechanic.
 - b. Access to and security of storage areas shall be recorded and maintained on file.
 - c. Insofar as practical, pilferable tools will be permanently marked **or** etched with the words "Property of BHA."
 - d. Property insurance to protect against loss of value due to a hazard loss shall be underwritten to include the value of inventory in storage.

VI. PROCEDURES:

1. General: This policy is a companion to the Authority's procurement policy. Purchases shall be made in accordance with the Authority's procurement policy and Applicable Federal and State laws and regulations. Office supplies and equipment, including MIS requirements on an Authority-wide basis, shall be procured and managed by the Office of Administration and Finance. Maintenance supplies, equipment and vehicles shall be procured and managed by the Office of Economic Development and Real Estate Management.

2. Receipts to Inventory: Receipts to inventory storage will be accomplished at the central warehouse. Shipping documents will be compared with actual quantity and condition by physical count and examination. Discrepancies will be noted on the shipping document.

- a. The item(s) will then be placed into inventory and packing slip will be annotated and signed by the central warehouse employee as received. The packing slip will then be forwarded to the purchasing agent.
- b. The purchasing agent will enter the receipt into the Inventory Master File and create asset record if applicable. The packing slip and capital asset record will be forwarded to the Finance Department. The capital asset record will include the following information as a minimum:

Asset Description
Serial Number
Vendor
Manufacturer
Model Number
Acquisition Price
Location
Purchase Order Number
Capital Asset Tag Number

- c. The Finance Department will reconcile packing slips against billing invoices prior to payment.
- d. Payment may be made only upon approval of the purchasing department and and Commissions who will independently review all accounts payable prior to payment.

APPENDIX H: REQUIRED ADDITIONAL CONTRACT PROVISIONS UNDER 2 C.F.R. 200, APPENDIX II:

BHA shall include in its contracts as applicable all contract provisions required under 2 C.F.R 200, Appendix II, which states as follows:

**Appendix II to Part 200—Contract Provisions for Non-Federal Entity
Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work

Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or

otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.