

Fall River Housing Authority

Authorized Vendor Program Application and Agreement

Fall River Housing Authority

85 Morgan St, Fall River, MA 02722

508-675-3590

Introduction

The Fall River Housing Authority (FRHA) welcomes and invites your business to become a valued partner within our supply chain. We wish to enhance the lives of our residents, drive value within our organization, and ensure the general public that public funds are utilized in an open, fair, efficient, and competitive nature.

This program is designed to allow your business the opportunity to do business with the FRHA on an on-going basis for routine micro purchases under \$2,000. To be solely placed on a list to be contacted for specific larger contracts, please register your business using the form located at our website.

Please familiarize yourself with all the information contained in this package. Any questions pertaining to this package should be directed to our procurement office, at 508-675-3590 or procurement@fallriverha.org Applications can be faxed, emailed, or delivered to the address below:

Fall River Housing Authority
Attn: FRHA Authorized Vendor Program
85 Morgan St
Fall River, MA 02722
Phone: 508-675-3590
Fax: 508-675-3591
Email: procurement@fallriverha.org

Please make sure to submit the following documents with your application:

1. FRHA Authorized Vendor Application (Must Include)
2. FRHA Authorized Vendor Agreement Statement (Must Include)
3. Applicable Licenses and Certifications (If Applicable)
4. Insurance Certificates (If Applicable)
5. Massachusetts SDO (Supplier Diversity Office) Certification (If Applicable)

Click here for more information: <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-and-serv/sdo/state-cert-prog/>

6. HUD Section 3 Low Income Business Concern Application (If Applicable)

Click here for more information: <http://www.fallriverha.org/Section%203.html>

FRHA Authorized Vendor Application

Applicant Information

Firm Name _____

Address: _____

Street Address

City

State

ZIP Code

Phone: () Fax: () Email: _____

Tax ID or SSN: _____ Website: _____

Mailing Address: _____

If Different then Main Address

Street Address

City

State

Zip Code

Account Contact: _____

Accounts Payable: _____

Principals or Key Personnel: _____

Business Information

Business Organization:

- Sole Proprietorship General Partnership Limited Liability Company
 Limited Liability Partnership Corporation Not-For-Profit

Is the applicant certified as a disadvantaged business?

- MBE WBE HUD Section 3 Business Concern

Service or Supply to Provide:

I have read and understand all of the questions above and certify all information provided is true and accurate.

Authorized Signature: _____ Date: _____

FRHA Authorized Vendor Program Agreement

1. Vendor Code of Conduct

The Fall River Housing Authority is committed to conducting its procurement business in an ethical, legal and socially responsible manner. The Fall River Housing Authority expects its suppliers to share this commitment and, therefore, has established this **Vendor Code of Conduct**. All Fall River Housing Authority suppliers must meet the following minimum requirements in order to do business with the Fall River Housing Authority.

A. Compliance with Laws, Regulations and Published Standards

All suppliers to the Fall River Housing Authority must comply with all applicable laws, codes or regulations of the countries, states and localities in which they operate. This includes, but is not limited to, laws and regulations relating to environmental, occupational health and safety, and labor practices. In addition, Fall River Housing Authority suppliers must require their suppliers (including temporary labor agencies) to do the same.

B. Environmental Practices

All suppliers to the Fall River Housing Authority shall comply with all environmental laws and regulations applicable to their operations worldwide. Such compliance shall include, among other things, the following items:

- Obtaining and maintaining environmental permits and timely filing of required reports
- Proper handling and disposition of hazardous materials
- Monitoring, controlling and treating discharges generated from operations

C. Occupational Health and Safety Practices

All suppliers to the Fall River Housing Authority are expected to provide their employees with a safe and healthy working environment in order to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of the supplier. Suppliers shall, among other things, provide:

- Occupational health and safety training
- A system for injury and illness reporting
- Medical treatment and/or compensation to injured/ill workers arising as a result of working for supplier
- Machine safeguarding and other protective measures to prevent injuries/illnesses to workers
- Clean and safe facilities

D. Labor Practices

All suppliers to the Fall River Housing Authority are expected to adopt sound labor practices and treat their workers fairly in accordance with local laws and regulations. In addition, suppliers must comply with the following standards:

- Freely Chosen Employment - Suppliers shall not use any forced labor, whether in the form of prison labor, indentured labor, bonded labor or otherwise.
- No Child Labor - Suppliers shall comply with local minimum working age laws and requirements and not employ child labor.
- Minimum Wages - Suppliers shall provide wages for regular and overtime work and benefits that meet or exceed legal requirements.
- Working Hours - Suppliers shall not require workers to work more than the maximum hours of daily labor set by local laws.
- No Harsh, Inhumane Treatment or Abuse - Suppliers shall treat each employee with dignity and respect. In no event shall Supplier's workers be subject to threats of violence, physical punishment, confinement or other form of physical, sexual, psychological or verbal harassment or abuse.
- No Discrimination - Suppliers shall not discriminate in its employment practices on the basis of race, color, religion, sex, age, physical disability, national origin, creed or any other basis prohibited by law.
- Prevailing Wages – Suppliers shall provide Massachusetts prevailing wages on all State funded sites for applicable construction and public work jobs. Please contact the Authority for applicability and for a copy of the current wages.

E. Ethical Business Practices

All suppliers to the Fall River Housing Authority are expected to conduct their businesses in accordance with the highest standards of ethical behavior and in accordance with applicable laws and regulations. Suppliers are expected to conform to these requirements in each of the following areas:

- Fair Trade Practices - Suppliers shall not engage in collusive bidding, price fixing, price discrimination or other unfair trade practices in violation of antitrust laws.
- Bribery, Kickbacks and Fraud - No funds or assets of the supplier shall be paid, loaned or otherwise disbursed as bribes, "kickbacks", or other payments designed to influence or compromise the conduct of the Authority.
- Conflicts of Interest- Suppliers shall disclose to the Procurement Department any personal relationships with FRHA employees. Any non-disclosure may result in disbarment and other legal ramifications.
- Fall River Housing Authority Policies and Procedures - Suppliers must comply with the Authority's published policies and procedures, including, but not limited to, the Authority's conflict of interest and procurement policies.
- Intellectual Property Rights - Suppliers shall respect the intellectual property rights of others, especially the Authority, its affiliates and business partners. Suppliers shall take appropriate steps to safeguard and maintain confidential and proprietary information of the Fall River Housing Authority and shall use such information only for the purposes specified for use by the Authority. Suppliers shall observe and respect all Authority patents, trademarks and copyrights and comply with all requirements as to their use as established by the Fall River Housing Authority. Suppliers shall not transmit confidential or proprietary information of the Fall River Housing Authority via the internet unless such information is encrypted in accordance with minimum standards established by the Fall River Housing Authority.

F. Monitoring and Compliance

All suppliers to the Fall River Housing Authority must conduct audits and inspections to ensure their compliance with this Supplier Code of Conduct and applicable legal requirements. If a supplier identifies areas of non-compliance, the supplier agrees to notify the Procurement Department as to its plans to remedy any such non-compliance.

The Fall River Housing Authority's or its representatives may engage in monitoring activities to confirm Supplier's compliance to this Supplier Code of Conduct, including on-site inspections of facilities, use of questionnaires, review of publicly available information, or other measures necessary to assess supplier's performance. Any Fall River Housing Authority's supplier or Fall River Housing Authority employee that becomes aware of violations of this policy is obligated to notify the Procurement Department. Based on the assessment of information made available to the Fall River Housing Authority, the Fall River Housing Authority reserves the right (in addition to all other legal and contractual rights) to disqualify any potential supplier or terminate any relationship with any current supplier found to be in violation of this Supplier Code of Conduct without liability to the Fall River Housing Authority.

2. Supplier Performance Expectations

The FRHA Procurement Department has established the following supplier expectations to ensure the delivery of quality, value, service and return-on investment to our residents and the general public.

A. Commitment

- Be committed to our quest for quality, business excellence, and high standards of performance.

B. Superior Quality

- Have a documented quality system.
- Use process controls and emphasize defect prevention rather than defect detection. Be proactive.
- Ensure compliance with contractual agreements.
- Strive for continuous improvement in quality of products and services in all facets of operations.

C. Technology and Innovation

- Provide products and services that give FRHA a technical, process or service advantage.
- Participate in the development of process improvements and new applications with Procurement Department staff members.
- Provide innovative solutions that differentiate FRHA from our peer institutions.

D. Lowest Total Cost

- Openly share information on all elements of cost. We strongly believe that if we can collaborate with you to reduce your cost, we can ultimately reduce our cost.
- Achieve productivity improvements which result in lower costs every year. Provide ideas and solutions that will drive lower total cost for products and services.

E. Responsiveness

- Promptly respond to requests for information, technical assistance and corrective action.
- Ensure that all FRHA departments are promptly serviced professionally and to the highest customer service standards.

F. On-Time Delivery

- Keep commitments to deliver on time, to the proper location with the proper quantity.
- Comply with purchase order and contract requirements regarding schedules and deliveries for products and services.

G. Community and Environmental Responsibility

- Meet, and preferably surpass, all applicable regulatory requirements.
- Inform the Procurement Department of changes that will affect compliance with applicable regulations.
- Work with the Procurement Department to resolve mutual environmental concerns.

H. Honesty and Integrity

- Conduct all business in an honest and ethical manner.
- Do not accept specifications or requirements which you cannot meet.
- Promptly notify the Procurement Department when there are changes to products and services which have the potential to impact our business relationship.
- Notify the Procurement Department of intentions to discontinue supply of products or services well in advance of the discontinuance schedule to allow FRHA enough time to develop an alternate solution.
- Protect the confidentiality of FRHA information.

I. Effective Use of Electronic Commerce

- Participate in the development of hosted or punch out electronic product catalogs and draft cart solutions to automate the procurement to payment process as much as possible.
- Receive electronic purchase order, submit electronic purchase order invoices, and accept electronic payment options.
- Participate in the use of eSourcing tools.
- Ensure that all supplier purchase order invoices reference an official Authority purchase order number and submit all purchase order invoices direct to Accounts Payable to ensure timely payment of invoices.

3. Purchase Order Terms & Conditions

A. General

The following terms and conditions, together with such terms as are set forth in the Purchase Order Form ("Form"), with such plans, specifications or other documents as are incorporated by reference, as amended in any subsequent authorized writing from Buyer, shall constitute the entire contract (the "Purchase Order") between The Fall River Housing Authority ("Buyer") and Supplier. These terms and conditions will apply to all purchase orders submitted through duration with the program. If bid documents, performance specifications, technical product descriptions or other similar descriptive materials submitted by Supplier in connection with the Purchase Order, or Supplier's proposal, have been incorporated by reference, these shall not be deemed to supersede any contrary requirements of Buyer, but to the extent that such materials are not inconsistent with Buyer's requirements, they shall constitute a part of the basis of this agreement. If this Purchase Order is construed as an offer, this offer expressly limits acceptance to the terms of this offer and notice of objection to any different or additional terms in any response to this offer is hereby given. If this Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the offeror's assent to any different or additional terms contained or referenced in this Purchase Order. If this Purchase Order is construed as a confirmation of an existing contract, the parties agree that this confirmation states the exclusive terms of any contract between the parties. This Purchase Order shall be deemed to have been accepted by the Supplier upon receipt by the Buyer of any writing, including a writing transmitted by fax or other means of electronic transmission, indicating acceptance, or by any of the following: (i) shipment of the goods or any portion thereof, (ii) commencement of any work on site or (iii) performance of any services hereunder.

B. Electronic/Facsimile Transmission

If this Purchase Order is transmitted by fax or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to the Supplier.

C. Payment

The net amount shall be payable within 30 days after invoicing. Supplier assigns to Buyer all rights to refunds of sales and use taxes paid in connection with this Purchase Order and agrees to co-operate with Buyer in the processing of any refund claims. Unless expressly otherwise provided. Buyer shall not be liable for any shipping, handling, fuel surcharges or similar fees.

D. Time

If delivery or completion dates cannot be met, Supplier shall inform Buyer immediately. Such notice shall not, however, constitute a change to the delivery or completion terms of this Purchase Order unless Buyer modifies this Purchase Order in writing. If any item is not received or if any element of the work is not completed by the date specified, the Buyer, at Buyer's option and without prior notice to Supplier, may either approve a revised date or may cancel this Purchase Order and may obtain such goods or work elsewhere and in either event the Supplier shall be liable to the Buyer for any resulting loss incurred by the Buyer. Supplier's sole remedy for a delay caused by Buyer shall be an extension in the time for Supplier's performance equal to the duration of Buyer's delay. Supplier shall not be liable for damages resulting from Supplier's failure to deliver or complete, or for delays in delivery or completion, caused solely by strikes not caused by or within the control of Supplier, lock-outs not caused by or within the control of Supplier, fires, war or acts of God. TIMING OF DELIVERY AND/OR PERFORMANCE OF THE WORK IS OF THE ESSENCE OF THIS PURCHASE ORDER.

E. Improper Performance and Disputes

In addition to other remedies provided by law, Buyer reserves the right to reject any goods or to revoke any previous acceptance and to cancel all or any part of the Purchase Order if Supplier fails to deliver all or any part of the goods or perform any of the work in accordance with the terms and conditions of this Purchase Order. Acceptance of any part of the Purchase Order shall not bind the Buyer to accept any future shipments or work, nor deprive it of the right to return goods already accepted. At Buyer's option, if Buyer so elects in its sole discretion with regard to any particular dispute, any dispute arising in connection with this Purchase Order shall be resolved by arbitration in Fall River, MA in accordance with the rules of the American Arbitration Association; and all disputes shall otherwise be resolved in and only in the appropriate courts in Massachusetts as the exclusive judicial forum. BUYER AND SELLER WAIVE THEIR RIGHT TO A JURY TRIAL WITH REGARD TO ANY DISPUTE ARISING IN CONNECTION WITH THIS PURCHASE ORDER.

F. Warranty

Supplier expressly warrants all (i) goods delivered under this Purchase Order to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered and (ii) work performed under this Purchase Order to be in conformity with all plans, specifications and other data incorporated as part of this Purchase Order. Notwithstanding any limitation of warranty, Supplier further represents and warrants that the supply, quality and fitness for the purpose of the goods or services will not be impaired, disrupted or interrupted in whole or in part by the occurrence of any leap year. These express warranties shall not be waived by reason of acceptance or payment by the Buyer. This Purchase Order incorporates by reference all terms of the Uniform Commercial Code as adopted in the Commonwealth of Massachusetts (the "UCC") providing any protection to Buyer for goods, including but not limited to all warranty protection (express or implied) and all of Buyer's remedies under the UCC. All goods and work shall also be subject to any stricter warranties specified in the Purchase Order or in other materials incorporated by reference.

G. Risk of Loss

Unless the Purchase Order expressly states otherwise, all goods shall be shipped FOB: the "Ship to" location designated in the PO. Risk of loss shall not pass to Buyer until goods called for in this Purchase Order actually have been received and accepted by the Buyer at the destination specified herein. Supplier assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if Buyer has agreed to pay freight, express or other transportation charges.

H. Indemnity and Hold Harmless

From and after the date of this Purchase Order, the Supplier agrees to indemnify, defend and hold harmless the Buyer from any and all claims and liabilities, regardless of by whom such claim or liability may be asserted, for personal injury (including death), or loss or damage to property, or otherwise that may result directly or indirectly from the use, possession or ownership of the goods or from the services provided by Supplier pursuant to this Purchase Order.

With regard to Supplier's obligation to defend, the Buyer shall have the right to select the legal counsel whom Supplier shall provide to defend any Indemnified Party, subject to Supplier's approval of the qualifications of such legal counsel and the reasonableness of counsel's hourly rates as compared to the rates of attorneys with similar experience and qualifications in the relevant area of legal expertise and in the jurisdiction where the claim will be adjudicated. If the Buyer elects, in its sole discretion, to retain

separate legal counsel, in addition to or in lieu of the counsel to be provided by Supplier, then all costs and expenses incurred by the Buyer for such separate counsel shall be borne by the Buyer and the Supplier shall reasonably cooperate with the Buyer and its separate legal counsel in the investigation and defense of any such claim or action. Supplier shall not settle or compromise any claim or action giving rise to Claims in a manner that imposes any restrictions or obligations on Buyer without Buyer's prior written consent. If the Buyer elects to require that Supplier defend a Claim pursuant to this paragraph, and Supplier fails or declines to assume the defense of such Claim within thirty (30) days after notice thereof, the Buyer may assume the defense of such Claim for the account and at the risk of Supplier, and any Liabilities related thereto shall be conclusively deemed a liability of Supplier. The indemnification rights of the Indemnified Parties contained herein are in addition to all other rights which such Indemnified Party may have at law or in equity or otherwise.

I. Assignment/Subcontracting

Neither party shall have any right to assign this Purchase Order or any benefits arising from this Purchase Order without prior written consent of the other and, unless otherwise agreed upon in writing, the rights of any assignee shall be subject to all set-offs, counterclaims, and other comparable rights arising hereunder. Supplier shall not, except in the case of standard commercial goods, or except as otherwise agreed in writing by the Buyer, delegate or subcontract the work on any item of material or service to be delivered or performed under this Purchase Order.

J. Insurance

In connection with the Purchase Order, Supplier, at its own cost and expense, shall obtain and maintain in force during the term of this Purchase Order, the following insurance coverage:

- a) A policy of workers' compensation insurance, in amounts required by law, covering all officers and employees of Supplier who are in any way engaged in or connected with the Purchase Order, and employer's liability insurance in an amount of not less than Five Hundred Thousand Dollars (\$500,000). Supplier shall require its agents, sub-suppliers and subcontractors, who are in any way engaged in or connected with the Purchase Order to maintain the same insurance as required herein of Supplier.
- b) A policy of commercial general liability insurance with broad form property damage endorsement, personal injury and products completed operations coverage, affording protection in an amount of not less than One Million Dollars (\$1,000,000) per incident and in the aggregate, with respect to personal injury, death, or damage to property.
- c) If this Purchase Order contemplates professional services, a policy of professional liability insurance, including errors and omissions, affording protection of not less than five hundred thousand (\$500,000) per incident and One Million Dollars (\$1,000,000) in the aggregate.
- d) A policy of comprehensive automobile liability insurance covering the operation of all motor vehicles used by Supplier or its agents in connection with this Purchase Order, affording protection in an amount of not less than One Million Dollars (\$1,000,000) combined single limit with respect to personal injury, death, or damage to property.

All of these insurance policies shall be issued by insurance companies with an AM Best rating of "A" or higher and a financial strength rating of VII or higher, or equivalent ratings provided by a disinterested, generally recognized rating agency, which companies shall be licensed or permitted to conduct business in the Commonwealth of Massachusetts. The commercial general liability policy shall name The Fall River Housing Authority as an additional insured, and shall be written as primary coverage and not contributing with or in excess of any coverage that the Buyer may carry. Supplier must furnish to Buyer a current certificate of insurance for each of the policies required above. Insurance coverage(s) provided

under this Purchase Order shall not limit or restrict in any way the liability of Supplier arising under or in connection with this Purchase Order. Such insurance shall not be canceled or terminated without ten (10) days prior written notice of any cancellation or termination.

K. Compliance with Laws and Regulations

The Supplier agrees to comply with all applicable federal, state, and local laws and regulations.

L. Termination Without Cause

Buyer, in its sole discretion and without cause, may terminate this Purchase Order, in whole or in part, at any time without incurring liability to Supplier for lost profits, or any other costs or damages, other than the proportionate value of the purchase price for work completed on site or goods delivered. Payment due shall be a percentage of the purchase price equal to the percentage of the work completed and/or any unit prices in the purchase price specified for goods delivered. Supplier's warranties and Supplier's liability for defective or non-conforming work or goods shall survive termination and remain in full force and effect.

M. Construction and Public Works as defined by M.G.L. C. 149 and 30 39M

The Supplier shall maintain on the Site at all times a sufficient work force to carry out its obligations in an efficient and timely manner. The Supplier shall employ only competent, skilled, reliable and honest workmen who will work in harmony with other workmen on the Site. All persons furnished by Supplier shall be deemed Supplier's employees or agents, and Supplier shall comply with all applicable statutes regarding worker's compensation, prevailing wages, OSHA, employer's liability, unemployment compensation, and/or old age benefits and all other applicable laws relating to or affecting the employment of labor. At the Owner's instruction, the Supplier shall promptly remove from the Site any employee who, in the Owner's opinion, represents a threat to the safety or progress of the Project or persons on the Site, or who has engaged in any improper conduct, specifically including (without limitation) conduct which the Owner perceives as constituting harassment of students or other persons.

Supplier shall secure all materials and the site where Work is performed, and shall leave all areas broom clean (unless a more stringent cleanliness standard is set forth in documents that are incorporated in this Purchase Order by reference) and in a safe condition at the end of each work day and upon completion of the Work. In case of dispute, Owner may remove waste at Supplier's expense.

Supplier shall ensure that federal, state and county of residence criminal background checks are conducted on all persons performing Work at the Site, and shall exclude from the Site any dishonest, dangerous or otherwise unqualified persons.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course the first certified payroll report with for each employee; and that he will comply fully with all laws and regulations applicable to awards made subject to section 44A.

The undersigned further certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

In the event of an emergency threatening health, life or property, the Supplier shall take such action as may be necessary to save lives and protect persons from injury and, this being done, to protect and preserve property. The Supplier shall notify the Owner of any such emergency as promptly as is practicable under the circumstances.

N. Disadvantaged Businesses

The FRHA will give preference to Section 3 business concerns when feasible. The purpose of section 3 of the Housing and Urban Development Act of 1968, as amended by section 915 of the Housing and Community Development Act of 1992, is to "Ensure that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed toward low and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low income persons." Please ask for the Section 3 business concern application or download from our website here: <http://www.fallriverha.org/Section3BusinessConcernApplication.pdf> and submit with your authorized vendor application. Section 3 information and instructions are included in the Section 3 business concern application.

The FRHA seeks and encourages business with other disadvantaged businesses such as MBEs (Minority owned Business Enterprises) and WBEs (Woman Owned Business Enterprises). If you're interested in participating please be sure to indicate in your vendor application and provide any documentation necessary to prove your disadvantaged status.

O. Permits, Fees, Licenses

The contractor shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution of the work. The contractor shall give all notices and comply with all laws, regulations and orders of any public authority bearing on the performance of the work. The contractor is required to notify the FRHA representative of the need for any permits

P. Organization Conflicts of Interest

The contractor certifies by submission of the vendor application that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work with the FRHA and a prospective contractor's organizational, financial contractual or other interests are such that:

- i. Awarding the PO may result in an unfair competitive advantage;
- ii. The Contractor's objectivity in performing work may be impaired;

- iii. The Contractor has disclosed all relevant information and requested the FRHA to make a determination with respect to the PO.

The contractor agrees that if after the award of a PO, he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the FRHA which shall include a description of the action which the contractor has taken or intends to take to eliminate or neutralize the conflict. The FRHA may, however, terminate the PO for the convenience of the Authority if it would be in the best interest of the FRHA.

In the event that the contractor was aware of an organizational conflict of interest before the award of the PO, and intentionally did not disclose the conflict, the FRHA may terminate the PO for default.

The contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the FRHA.

Q. Mandatory Contract Clauses for Small Purchases Other Than Construction

The following contract clauses are required in contracts pursuant to 24 CFR 85.36(i) and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. HUD is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy. The PHA and contractor is also subject to other Federal laws including the U.S. Housing Act of 1937, as amended, Federal regulations, and state law and regulations.

a) Examination and Retention of Contractor's Records.

The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three 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) Right in Data and Patent Rights (Ownership and Proprietary Interest).

The PHA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by Contractor pursuant to the terms of this Contract, including, but not limited to, reports, memoranda or letters concerning the research and reporting tasks of the Contract.

c) Energy Efficiency.

The Contractor shall comply with all mandatory 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 this contract is performed.

d) Procurement of Recovered Materials

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The

Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

e) Termination for Cause and for Convenience (contracts of \$10,000 or more).

(a) The PHA may terminate this contract in whole, or from time to time in part, for the PHA's convenience or the failure of the Contractor to fulfill the contract obligations (cause/default). The PHA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the PHA all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.

(b) If the termination is for the convenience of the PHA, the PHA shall be liable only for payment for services rendered before the effective date of the termination.

(c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (cause/default), the PHA may (1) require the Contractor to deliver to it, in the manner and to the extent directed by the PHA, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the PHA; and (3) withhold any payments to the Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by the PHA by the Contractor. In the event of termination for cause/default, the PHA shall be liable to the Contractor for reasonable costs incurred by the Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

R. HUD 5370-EZ (Small Construction Contracts from \$2,000-\$100,000)

All POs issued in the amounts of \$2,000 to \$100,000 for construction including any improvements made to a physical building will be subject to the general conditions set forth in form HUD 5370-EZ attached below.

General Contract Conditions for Small Construction/Development Contracts

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

OMB Approval No. 2577-0157 (exp. 01/31/2014)

Applicability. The following contract clauses are applicable and must be inserted into **small construction/development contracts greater than \$2,000 but not more than \$100,000.**

1. Definitions

Terms used in this form are the same as defined in form HUD-5370

2. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers. The only liens on the PHA's property shall be the Declaration of Trust or other liens approved by HUD.

3. Disputes

- (a) Except for disputes arising under the **Labor Standards** clauses, 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 for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (c) The Contracting Officer shall, within 30 days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (d) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within 30 days after receipt of the Contracting Officer's decision.
- (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 or relating to the contract, and comply with any decision of the Contracting Officer.

4. Default

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure 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 the event, the PHA 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 site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA 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 PHA 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; and
 - (2) The Contractor, within 10 days from the beginning of such delay 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 the **Disputes** clause of this contract.
- (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 obligation of the parties will be the same as if the termination had been for convenience of the PHA.

5. 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 in the best interest of the PHA. 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 PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA 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 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 not been made by the PHA 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 PHA 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 PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.
- (c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.
- (d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

6. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount] per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims-made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$ _____ [Contracting Officer insert amount] per occurrence.

(b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

7. 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 Contracting Officer 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 PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

(c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

8. 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 specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) PHA-furnished facilities, equipment, materials, services, or site; or,
- (4) Directing the acceleration in the performance of the work.

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; 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) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause 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 paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

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

(f) The Contractor's written proposal 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:

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor

breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; 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 warrants revision.

- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) 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, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled 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 order from the Contracting Officer.

9.Examination and Retention of Contractor's Records

The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three 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.

10.Rights in Data and Patent Rights (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

11.Energy Efficiency

The Contractor shall comply with all mandatory 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 this contract is performed.

12. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

13. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the

qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

14. Labor Standards - Davis-Bacon and Related Acts

(a) Minimum Wages.

(1) All laborers and mechanics employed under this contract in the construction or development of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in

a prominent and accessible place where it can be easily seen by the workers.

- (2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
 - (a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (b) The classification is utilized in the area by the construction industry; and
 - (c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
 - (3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) **Withholding of Funds.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) **Payrolls and Basic Records.**

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification

of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c)(1) of this clause and that such information is correct and complete;
- (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(d) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(e) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate

specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(f) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(g) Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(h) Contract Termination; Debarment. A breach of the labor standards clauses in this contract may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(i) Compliance with Davis-Bacon and related Act Requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(j) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.

(k) Certification of Eligibility.

- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government

contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

(l) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

(m) Non-Federal Prevailing Wage Rates. Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

- (i) the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;
- (ii) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- (iii) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

4. Procedures

Invoicing:

All invoices shall be mailed to our Accounts Payable at PO Box 989, Fall River, MA 02722 or emailed to ap@fallriverha.org . Payment terms are net 30. Our AP phone # is 508-324-1356.

Contracting Authority:

For supplies and services under \$2,000 you may be contacted by any authorized FRHA employee. All procurements require a pre-approved Purchase Order (PO)#. All other purchases above \$2,000 will only be processed through the FRHA Procurement Department.

Purchase Order Numbers:

A FRHA official PO number is required at all times before work is to commence or supplies to be delivered. Our PO numbers are five digits long and generally start with 1 e.g. 17264.

Transaction Limits:

The PO transaction limit for small purchases other than PO's issued directly from the FRHA procurement Department is \$2,000.00. If the amount of supplies or services is greater than \$2,000 you must contact the FRHA Procurement Department at 508-675-3590 before supplying material or equipment or conducting any work of any kind.

FRHA Contacts:

Title	Name	Phone	Fax	Email
Procurement Officer	Adam Gautie	508-675-3590	508-675-3591	adam.gautie@fallriverha.org
Procurement Specialist	Gina Consonni	508-324-6240	508-675-3591	gina@fallriverha.org
Procurement Specialist	Marie Bennett	508-324-6248	508-675-3591	marie.bennet@fallriverha.org
Senior Property Manager	Lorie Ras	508-675-3575	508-675-3592	lorie.ras@fallriverha.org
Senior Property Manager	Luanne Calvo	508-675-3553	508-324-0254	Luanne.calvo@fallriverha.org
Senior Property Manager	Deb Morrissette	508-675-3555	508-730-3465	Deb.morrissette@fallriverha.org
Senior Property Manager	Karen Costa	508-675-3562		Karen.costa@fallriverha.org
Facilities Maintenance Manager	Dave Machado	508-675-3575	508-675-3574	Dave.machado@fallriverha.org
Facilities Maintenance Manager	Wayne Souza	508-675-3594	508-675-3574	Wayne.souza@fallriverha.org
Facilities Maintenance Manager	Cliff Freitas	508-675-3594	508-675-3574	Cliff.freitas@fallriverha.org
Maintenance Superintendent	Jim Cavanaugh	508-675-3594	508-675-3574	Jim.cavanaugh@fallriverha.org
Asst. Maintenance Superintendent	Emilio Estacio	508-675-3594	508-675-3574	Emilio.estacio@fallriverha.org

FRHA Vendor Agreement Statement

I have read and understand all of the information and the responsibilities contained in the FRHA Vendor Agreement and agree to all conditions set forth in the FRHA Vendor Agreement as to be an FRHA authorized vendor. I agree to abide by the policies and procedures set forth in this agreement as a condition of continued business with the FRHA. I understand that abuse of this agreement may result in the disbarment from the FRHA authorized vendor program. I also understand that all purchase order terms and conditions listed in section 3 in the FRHA Vendor Agreement will apply to all purchase orders issued to my organization.

Pursuant to Massachusetts General Law Chapter 62(c), Section 49(a), the individual signing the related PO on behalf of the Contractor/Supplier, hereby certifies, under penalties of perjury, that to the best of his/her knowledge and belief the Contractor/Supplier has complied with any and all state laws relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

The undersigned certifies under penalties of perjury that any bid/proposal/quote for the issuance of a PO has been made and submitted in good faith and without collusion or fraud with any other person. As used in this agreement the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

I hereby acknowledge and agree with the above terms.

Authorized Signature: _____ **Date:** _____