

HOUSING AUTHORITY OF THE CITY OF OAKLAND (OHA)
PURCHASE ORDER TERMS AND CONDITIONS FOR
PURCHASE OF GOODS, EQUIPMENT AND/OR MATERIALS

A. ALL ORDERS – REGARDLESS OF FUNDING SOURCE

All Orders for the purchase of Goods, Equipment and/or Materials (collectively, “Goods”), regardless of funding source utilized, are subject to the following contract terms and conditions:

1. Offer/Acceptance; Conflicting Terms. Upon acceptance by OHA, a solicitation, bid, proposal, or price quotation and the resulting Purchase Order (collectively, this “Order” or “contract”) shall be deemed a binding contract upon Vendor’s commencement of performance. This Order constitutes the sole and entire agreement of the parties with respect to this Order and supersedes all prior agreements, understandings and commitments, whether oral or written. This Order shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto. If any term and condition listed herein is in conflict with any other term and condition imposed by OHA for the purchase of the subject Goods, OHA shall decide which terms and conditions apply.

2. Price and Payment. The price of the Goods is the price stated on the face of this Order (the “Price”). Vendor shall invoice OHA for this Order within 30 days of delivery. Invoices shall be prepared and submitted to the "Bill To" address shown on the Purchase Order. Invoices must be itemized and shall reference the Purchase Order number, description of Goods, unit of measure, and price. Unless otherwise stated in this Order, OHA shall pay all properly invoiced amounts due to Vendor within 30 days after receipt of such invoice, except for any amounts disputed by OHA. The parties shall seek to resolve all such disputes expeditiously and in good faith. Vendor shall continue performing its obligations under this Order notwithstanding any such dispute. Without prejudice to any other right or remedy, OHA reserves the right to set off any amount owing to it by Vendor against any amount payable by OHA to Vendor. Payment of an invoice is not evidence or admission that the Goods meet the requirements of this Order.

3. Deliveries. Goods shall be delivered and/or performed at the delivery point (the “Deliver Location”), and on the date(s) specified in this Order (the “Delivery Date”). If no delivery date is specified, Vendor shall deliver in full within a reasonable time of receipt of this Order. Timely delivery is of the essence. If Vendor cannot ship this Order without delay, Vendor shall notify OHA and establish a mutually acceptable delivery date. If Vendor fails to deliver the Goods in full, on the Delivery Date or a mutually acceptable delivery date, OHA may terminate all or any part of this Order and Vendor shall indemnify OHA against any losses, damages, and reasonable costs and expenses attributable to Vendor's failure to deliver. Vendor shall not substitute material or ship more than the quantity ordered without OHA’s prior written approval. Vendor shall be solely responsible for and pay all costs of delivering the Goods to the Delivery Location, including, without limitation, all shipping and freight costs.

4. Risk of Loss. Risk of loss shall not pass to OHA until the Goods called for in this Order actually have been received and accepted by OHA at the Delivery Location. Vendor assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if OHA has agreed to pay freight, express or other charges.

5. Inspection. OHA reserves the right to inspect the Goods on or after the Delivery Date. OHA, at its sole option, may reject all or any portion of the Goods if it determines the Goods are defective or nonconforming. If OHA requires repair or replacement of the Goods, pursuant to the Warranty provision herein, Vendor shall promptly repair or replace the nonconforming Goods. If Vendor fails to timely deliver

repaired or replacement Goods, OHA may replace them with Goods from a third-party and charge Vendor the cost thereof and terminate this Order. Any inspection or other action by OHA under this Inspection section shall not affect Vendor's obligations under this Order, and OHA shall have the right to further inspection after Vendor takes remedial action.

6. Warranty. Notwithstanding OHA's acceptance or right of inspection and/or any other terms or conditions provided in this Order, Vendor warrants that the Goods furnished hereunder: (i) are new and free from any defects in workmanship, material and design; (ii) conform to applicable specifications; (iii) are fit for their intended purpose and operate as intended; (iv) are free and clear of all liens, security interests or other encumbrances; and (v) do not infringe or misappropriate any third-party's intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of OHA's discovery of the noncompliance. If OHA gives Vendor notice of noncompliance, Vendor shall, at its own cost and expense, promptly replace or repair the nonconforming Goods.

7. Safety Requirements. All Goods furnished hereunder shall meet all Federal and State requirements regarding Health and Safety. All shipments of hazardous and toxic material shall include Material Data Safety Sheets (MSDS), which shall be sent to the attention of the Contract Compliance and General Services Department at the Delivery location indicated on the Purchase Order, and shall include the Purchase Order Number.

8. Conflicts of Interest. Vendor warrants that to the best of its knowledge and belief and except as otherwise disclosed in writing, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a Vendor's organizational, financial, contractual or other interests are such that (i) award of the Goods may result in an unfair competitive advantage, or (ii) Vendor's objectivity in performing the contract work may be impaired. Vendor agrees that if after award it discovers an organizational conflict of interest with respect to this Order or any task/delivery under this Order, he or she shall make an immediate and full disclosure in writing to the Contract Compliance and General Services Department, which shall include a description of the action which Vendor has taken or intends to take to eliminate or neutralize the conflict. OHA may, however, terminate this Order for the convenience of OHA if it would be in the best interest of OHA. In the event the Vendor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to OHA, OHA may terminate this contract for default.

9. Order Termination; Debarment. A material breach of these clauses may be grounds for termination of this Order and for debarment or denial of participation as a Vendor or subcontractor in future OHA procurements.

10. Indemnification. The Vendor shall hold OHA, its directors, officers, Board of Commissioners, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) harmless and at OHA's request defend the Indemnitees from any or all damages, liability, costs, judgments or obligations arising out of death, injuries or damage to any person or property resulting from or in any way connected with the performance or failure to perform this contract by the Vendor, its officers, employees, subcontractors or agencies.

11. Independent Contractor. While engaged in carrying out other terms and conditions of this Order, Vendor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of OHA.

12. Termination for Cause and for Convenience. (a) OHA may terminate this contract in whole, or from time to time in part, for OHA's convenience or the failure of the Vendor to fulfill the contract obligations. OHA shall terminate by delivering to the Vendor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Vendor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to OHA 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 OHA, OHA 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 Vendor to fulfill its obligations under the contract (cause/default), OHA may (1) require the Vendor to deliver to it, in the manner and to the extent directed by OHA, 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 Vendor shall be liable for any additional cost incurred by OHA; and (3) withhold any payments to the Vendor, for the purpose of set-off or partial payment, as the case may be, of amounts owed to OHA by the Vendor. In the event of termination for cause/default, OHA shall be liable to the Vendor for reasonable costs incurred by the Vendor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

13. Assignment. Vendor shall not assign any part of this Order without prior written consent of OHA.

14. Insurance. For the duration of the term of this Order, Vendor shall maintain insurance against claims for injuries to persons or damages to property that may arise from the performance of this Order by Vendor, or its agents, employees, or subcontractors as follows: (a) General Liability-\$1,000,000 per occurrence for bodily injury, personal injury, and property damage; (b) Automobile liability-\$1,000,000 per accident for bodily injury and property damage; (c) Workers' Compensation as required by State statute. Both policies (a) and (b) shall contain, or be endorsed to contain, that OHA is covered as an additional insured with respect to liability resulting from the performance of the Order. Prior to performing in accordance with this Order, Vendor shall submit to OHA original certificates and endorsements evidencing coverage required by this section, which coverage shall be issued by an insurance carrier admitted to the State of California having an A M BEST rating of not less than A: VIII (A:8), unless waived in writing by OHA's Risk Manager.

15. Legal Requirements. Vendor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, and the provisions of the Americans with Disability Act (ADA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), and all Occupational Safety and Health Administration (OSHA) regulations applicable to the work. Vendor shall identify, secure and pay for all requisite permits, fees and licenses.

16. Warranty of Title. Vendor warrants good title to all materials, supplies, and equipment incorporated in the Services.

17. Governing Law. This Order shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. In any action arising out of this Order, Vendor consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Alameda County, California.

18. Liens. The Vendor is prohibited from placing a lien on OHA's property. This prohibition shall also apply to all subcontractors.

19. No Attorney Fees. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of, any right or obligation pursuant to this Order or as a result of any alleged breach of any provision of this Order, each party shall bear its own costs and expenses, including attorney fees, and any judgment or decree rendered in such a proceeding shall not include an award thereof.

20. Amendment. This Order may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

21. Survival. The provisions of this Order which by their nature survive termination of this Order or final completion, including all warranties, indemnities, payment obligations, and OHA's right to audit Vendor's books and records, shall remain in full force and effect after final completion or any termination of the Order.

22. Equal Employment Opportunity. Vendor shall comply with all applicable equal opportunity and affirmative action laws, directives and regulations.

B. FEDERALLY - ASSISTED ORDERS

Federally-assisted Orders for the purchase of Goods are also subject to the following contract terms and conditions. "Contractor" as used herein refers to Vendor.

1. Certification of Eligibility. Vendor certifies that neither he/she/it nor any person or firm who has an interest in the Vendor's business is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

2. Equal Employment Opportunity¹

During the performance of the Contract, the Contractor agrees as follows:

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity 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, sexual orientation, gender identity or national origin. Such action shall include, but not be 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, sexual orientation, gender identity 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.

¹ 2 CFR Part 200, Appendix II (C)

(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, the Order 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 subcontractor 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 or 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.

3. Procurement of Recovered Materials²

[Contracts for the purchase of goods valued in excess of \$10,000 or where the value of the quantity of goods acquired during the preceding fiscal year exceeds \$10,000]

(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 the Order where: (1) the Contractor purchases in excess of \$10,000 of the item under the Order; 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 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.

4. Clean Air and Water³

(Contracts in Excess of \$150,000)

² 2 CFR Part 200, Appendix II (J); 2 CFR 200.322

³ Source 2 CFR Part 200, Appendix II (G)

Contactor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which the Order is to be performed.

5. Limitations on Payments Made to Influence Certain Federal Financial Transactions⁴
(Contracts in Excess of \$100,000)

(a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code (“Act”) 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.

(b) 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.

C. HUD ACT OF 1968 SECTION 3 COMPLIANCE REQUIREMENTS

If the requirements of Section 3 are imposed herein, the regulations set at 24 CFR Part 75 and in OHA’s Section 3 Policy and Compliance Plan will apply.

⁴ 2 CFR Part 200, Appendix II (I)