

# Housing Authority of Brevard County

## Request for Proposal



### **AUDIT SERVICES**

**Date: February 5, 2018**

*Responses due @ 2:00 P.M., Thursday, March 8th, 2018*

*John Sullivan, Director of Asset Management  
Housing Authority of Brevard County  
1401 Guava Ave  
Melbourne, FL 32935*

*(321) 775-1581*

**THE HOUSING AUTHORITY OF BREVARD COUNTY (HABC) CONDUCTS ITS PROCUREMENT ACTIVITIES IAW CFR PART 200.317 THRU 200.326, APPLICABLE FEDERAL AND STATE REGULATIONS, AND THE AUTHORITIES PROCUREMENT POLICY. THESE DOCUMENTS ARE AVAILABLE FOR REVIEW AT HABC OFFICE LOCATED AT 1401 GUAVA AVE. MELBOURNE, FLORIDA.**

**STATEMENT OF WORK AND CONTRACT CLAUSES  
FOR  
AUDIT CONTRACT**

1. Statement of Work:

- a. This engagement is a three-year audit contract with each annual audit being negotiated separately as hereinafter set out. You will audit the financial statements of:

The Housing Authority of Brevard County, Florida (FYE, 31 Mar)  
The Melbourne Housing Authority (FYE, 31 Mar)

for the years ended 31 March 2018, years ending 31 March 2019 and years ending 31 March 2020.

- b. The audits will be single audits conducted in accordance with generally accepted auditing standards for financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States; the Single Audit Act of 1984 and the provisions of 2 CFR, Part 200, Subpart F, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" and U. S. Department of Housing and Urban Development (HUD) rules on Uniform Financial Reporting Standards. The audits will include tests of the accounting records of the Housing Authority of Brevard County & MHA and other procedures you consider necessary to enable you to express an unqualified opinion that the financial statements are fairly presented, in all material respects, in conformity with generally accepted accounting principles and to report on the Schedule of Federal Financial Assistance and on the Housing Authority of Brevard County's & MHA compliance with laws and regulations and their internal controls and management practices as required for a Single Audit.

- c. The scope of audit for periods ending 2018 is as follows:

1. Housing Authority of Brevard County:

- i. Conventional Housing Program
- ii. Housing Choice Voucher Program
- iii. ROSS Grant
- iv. Non-Subsidized Affordable Housing (4 units)
- v. Capital Fund Program
- vi. COCC
- vii. FSS Grant

2. Melbourne Housing Authority:
  - i. Conventional Housing Program (non COCC)
  - ii. Capital Fund Program

d. The scope of audit for the periods ending 2019 are forecast as follows and any deviations will be adjusted prior to the FY 2018 audit:

1. Housing Authority of Brevard County:
  - i. Conventional Housing Program
  - ii. Housing Choice Voucher Program
  - iii. Capital Fund Program
  - iv. Non-Subsidized Affordable Housing (4 units)
    - v. ROSS Grant
    - vi. COCC
    - vii. FSS Grant
2. Melbourne Housing Authority:
  - i. Conventional Housing Program (non COCC)
  - ii. Capital Fund Program

e. The scope of audit for the periods ending 2020 are forecast as follows and any deviations will be adjusted prior to the FY 2019 audit:

1. Housing Authority of Brevard County:
  - i. Conventional Housing Program
  - ii. Housing Choice Voucher Program
  - iii. Capital Fund Program
  - iv. Non-Subsidized Affordable Housing (4 units)
    - v. ROSS Grant
    - vi. COCC
    - vii. FSS Grant
2. Melbourne Housing Authority:
  - i. Conventional Housing Program (non COCC)
  - ii. Capital Fund Program

2. Time of Performance:

- a. The Auditor shall commence work at an agreed upon time (Aug-Sep) after notice of award and shall file a completed audit report with DHUD's automated system prior to December 31 for Brevard County and Melbourne. **Auditor will provide in person out-briefs to applicable Boards no later than 30 November.**
- b. Director of Finance will provide a complete audit book with detailed reconciliations (sample avail upon request) before audit field work commences. Financial statements including the FDS will be also prepared before audit field work begins.
- c. The PHA shall make its records accessible to the Auditor during normal business, Monday through Thursday, 8:00 a.m. to 6:00 p.m., and shall provide requested documents with reasonable dispatch.
- d. Failure of the PHA to provide access to records during non-duty hours shall not constitute a breach of the contract.
- e. Failure of the PHA to deliver its books and records in a proper state for audit in a timely manner may constitute a basis for a contract price revision, but not a time extension for filing in a. above.

3. Payment:

The contractor will be entitled to one-half the agreed contract amount upon submission of the Audit Report to the Department of Housing and Urban Development (HUD). The remaining one-half will be payable when the PHA receives HUD acceptance of the Audit Report.

4. 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.

5. Changes:

- a. The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed.
- b. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- c. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- d. If the Contractor's proposal includes the cost of property (work product) made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- e. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- f. No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

6. Disputes:

- a. **Claim**, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed whether as to liability or amount or is not acted upon in a reasonable time.
- b. 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.

- c. 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.
- d. The Contracting Officer shall, within sixty (60) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- e. 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 (unless otherwise indicated) after receipt of the Contracting Officer's decision.
- f. 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.

7. 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 this 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 HA 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 work is terminated. This liability includes any increased costs incurred by the PHA in completing the work, or subsidy revenues denied the PHA as a result of late filing of the completed audit.
- b. The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if:
  - 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such cause include: (i) acts of God, or of the public enemy; (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity; (iii) acts of another contractor in the performance of a contract with the PHA; (iv) fires; (v) floods; (vi) epidemics; (vii) quarantine restrictions; (viii) strikes; (ix) freight embargoes; (x) unusually severe weather; or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the

Contractor and the subcontractors or suppliers;

2. The Contractor, within ten (10) days from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of 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 obligations of the parties will be the same as if the termination had been for convenience of the PHA.

8. Termination for Convenience:

The Contracting Officer may terminate this contract, in whole or in part, when it is in the PHA's interest by written notice at any time. If this contract is terminated, the PHA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

9. Examination and Retention of Contractor's Records:

a. The PHA, HUD, General Accounting Office, Attorney General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transaction related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

b. The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph a. above. **Subcontract**, as used in this clause, excludes purchase orders not exceeding \$10,000.

c. The periods of access and examination in paragraphs a. and b. above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until three years after disposition of such appeals, litigation, claims, or exceptions.

10. Assignment of Contract:

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

11. Equal Employment Opportunity:

During the performance of this 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, national origin, or handicap.
- 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, national origin, or handicap. 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, national origin or handicap.
- e. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- f. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations and orders of the Secretary of Labor.
- g. The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records and accounts by

the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

- h. In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation or order of the Secretary of Labor, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations and orders of the Secretary of Labor, or as otherwise provided by law.
  - i. The, Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor 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.
  - j. Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.
12. Equal Opportunity for Businesses and Lower-Income Persons (RUD Act of 1968, Section 3)(Applicable to Contracts in Excess of \$500,000):
- a. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.
  - b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

- c. The Contractor will send to each labor organization or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his/her commitments under this Section 3 clause and shall post commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the required regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal financial assistance is provided, and to such sanctions as are specified by 24 CFR part 135.

13. Interest of Members of Congress:

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

14. Interest of Members, Officers, or Employees and Former Members, Officers or Employees:

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

15. Limitations on Payments made to Influence Certain Federal Financial Transactions:

- a. The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress 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.

16. Documentation Included by Reference:

OMB Circular A-133; DHUD Uniform Financial Reporting Standards (UFRS) for Public Housing Authorities; DHUD Guidelines for Public Housing Authorities and Independent Auditors and DHUD Publication; PHA and Auditor Users' Guide Financial Assessment Subsystem for PHAs Release 5.0; their updates and amendments as pertains to the Annual Audit of Public Housing Authorities, Public Housing Assistance Programs (Section 8) and Federal Grants.

## INFORMATION TO PROPOSERS

1. Proposal Submission: Priced proposal submitted under this solicitation must be received in the office of the Contracting Officer by **2:00 p.m. E.D.T., 7 March 2018**.

All proposals must be submitted on the forms provided by the Housing Authority. Proposals must be signed and the proposer's name typed or printed on the proposal sheet and each continuation sheet, if any.

All proposals shall be sealed in an envelope which shall be clearly marked with the words "Audit Proposal", the proposer's name, and date and time for receipt of proposal.

2. Explanations and Interpretations: Any proposer desiring an explanation or interpretation of the solicitation must request such information in writing 24 hours prior to scheduled proposal delivery. Any information given will be furnished to all prospective proposers by fax.

Any information obtained by or provided to a proposer other than by the above means shall not constitute a change to the solicitation.

3. Late Submissions, Modifications & Withdrawals of Proposal:

- a. Any proposal received at the place designated after the exact time for submission will not be considered unless it is received before award and it 1) is determined by the PHA that the late receipt was due solely to mishandling by the PHA, or 2) was sent by Express Mail Next Day Service not later than 5:00 p.m. E.D.T. at the place of mailing two (2) working days prior to the date specified for receipt.
- b. Notwithstanding paragraph a. of this provision, a late modification of an otherwise timely proposal that makes its terms more favorable to the PHA will be considered at any time providing it is received prior to public disclosure of pricing or rating criteria and may be accepted.

4. Service of Protest:

- a. Interested party, any actual or prospective proposer whose direct economic interest would be affected by the award of the contract may file a protest.
- b. Protest means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.
- c. Protest shall be served upon the Contracting Officer by obtaining written and dated acknowledgment from: Michael L. Bean, Contracting Officer, 1401 Guava Ave, Melbourne, FL 32935.
- d. All protests shall be resolved in accordance with the PHA's protest policy and procedures, copies of which are maintained at the PHA.

5. Contract Award:

- a. The PHA will evaluate proposals in response to this solicitation and reserves the right to negotiate with any, all or none of the proposers and award a contract to the responsible proposers whose proposal, conforming to the solicitation, will be most advantageous to the PHA, considering price, price related factors and qualifications specified in the solicitation. **Initial contract award will be for three years with a two year option for renewal if agreed upon by both parties.** Award for three years does not negate Termination for Convenience clause.
- b. Definition of terms for evaluation/estimating purposes:

Partner - an individual holding a CPA license with a partnership interest in the firm and responsible for issuing the audit report.

Manager - an individual regularly employed by the firm who holds a CPA and has ten years auditing/accounting experience and is responsible for supervision of the audit.

Senior Auditor/Accountant - an individual who holds a CPA and has five years or more of progressive audit/accounting experience.

Junior Auditor/Accountant - an individual who holds a CPA and has less than five years experience or an individual who holds an accounting degree and has more than five years experience in responsible auditing/accounting.

Other/Paraprofessional - administrative/support staff who do not perform audit review of records but provide support services.

- c. Method of Evaluation: These factors will be used to evaluate Audit Proposal Responses for HABC.

<u>FACTORS</u>	<u>MAXIMUM VALUE</u>
1. Background, experience and expertise of CPA(s)	
If Firm is bidding:	
a. Firm's background and experience	15
b. Proposed CPA's background, experience and expertise	25
If Sole Practitioner is bidding	
c. The CPA's background, experience and expertise	40
2. Proposed Timeliness and Availability of Service	25
3. Interview (if required)	10
4. Fee Proposal – to be negotiated	<u>25</u>
Total Number of Possible Points	100

- d. The PHA may reject any and all proposals, accept other than the lowest proposal (e.g., the apparent low proposal is not the highest rank under c above) and waive informalities or minor irregularities in proposals received in accordance with the PHA's written policy and procedures.
- e. A written award shall be furnished to the successful proposer within the period for acceptance specified in the proposal and shall result in a binding contract without further action by either party.
- f. The PHAs will rate the proposals and the CEO will present staff recommendation in a joint public forum on a date that is subsequently publicly noticed.

6. References:

- a. 2 CFR, Part 200, Subpart F can be accessed online at: <http://11ecfr.gov/csi-bin/text-idoc?node=sp2.1.200.f>
- b. HUD guidance on Uniform Financial Reporting Standards (UFRS) for Public Housing Authorities; can be found online at <http://www.gov/react>.



Said total sums derived as follows: Audit 2019

<u>Classifications</u>	<u>Proposed Hours</u>	<u>Billing Rate</u>	<u>Proposed Cost</u>
Partner			
Manager			
Senior Auditor			
Junior Auditor			
Admin/Other			
Total 2019			\$ _____

Said total sums derived as follows: Audit 2020

<u>Classifications</u>	<u>Proposed Hours</u>	<u>Billing Rate</u>	<u>Proposed Cost</u>
Partner			
Manager			
Senior Auditor			
Junior Auditor			
Admin/Other			
Total 2020			\$ _____

This proposal has been executed this \_\_\_\_\_ day of \_\_\_\_\_ 2018 by  
\_\_\_\_\_, who is \_\_\_\_\_ of the  
Firm of \_\_\_\_\_

and shall remain in effect for 30 days.

Signed \_\_\_\_\_

Witness \_\_\_\_\_

The Housing Authorities of: Brevard County  
Melbourne

acting through their Chief Executive Officer/Contracting Officer and contracting in the name of the Housing Authority of Brevard County do hereby accept the foregoing proposal for Audit as negotiated and/or amended in the amount of \$\_\_\_\_\_ for FY-2018, and further agree to the sum of \$\_\_\_\_\_ for FY-2019 and further agree to the sum of \$\_\_\_\_\_ for FY-2020, subject to revision of Statement of Work and renegotiation thereon.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Housing Authority of Brevard County

Michael L. Bean  
Chief Executive Officer/Contracting Officer

**Handbook No. 7460.8 REV 2 5-6 2/2007 TABLE 5.1 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.

**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.

**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.

**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.

**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.

**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 of 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.

Vendor Acknowledgement \_\_\_\_\_

Date: \_\_\_\_\_