

NEW YORK CITY HOUSING AUTHORITY
MICRO PURCHASE FORM (Under \$10K)
VENDOR PROPOSAL FOR MATERIALS ONLY

Requestor Name: _____ Department/Development: _____

Detailed Description of Materials to be Supplied and Delivered Required (Include an itemized list of material): *(To be completed by NYCHA Representative)*

If Additional Detailed Description of Work Required, please continue on page 2.

THIS SECTION TO BE COMPLETED BY VENDOR WITH AN ATTACHED QUOTE:

VENDOR NAME: _____ FEDERAL TAX I.D. NO.: _____

VENDOR ADDRESS: _____
Street City State Zip Code

E-Mail: _____ TELEPHONE NO.: _____

The following is the proposal (the "Proposal") for above mentioned materials (the "Materials"):

MATERIAL COST: \$ _____

(PLEASE INCLUDE SHIPPING)

TOTAL COST: \$ _____

I acknowledge receipt of NYCHA's Terms & Conditions

The undersigned hereby proposes, on behalf of the Vendor, to furnish and deliver to NYCHA the Materials, obtain and maintain insurance, pay all applicable taxes and perform all obligations necessary to supply and deliver the Materials in accordance with the Contract as defined below. The undersigned further understands and agrees that if NYCHA accepts such Proposal, NYCHA shall award a purchase order (the "Purchase Order"), signed by NYCHA, to the Vendor for the Materials and such Purchase Order shall constitute NYCHA's acceptance of Vendor's Proposal and, such Purchase Order, together with the Proposal and NYCHA's Contract Terms and Conditions (the receipt of which has been acknowledged above by Vendor), shall form a binding contract between NYCHA and the Vendor (the "Contract"). The undersigned hereby certifies that it is authorized on behalf of the Vendor to bind the Vendor to such Contract.

NAME OF VENDOR REPRESENTATIVE SUBMITTING THIS QUOTE:

Print Name, Title Signature Date

Additional Detailed Description of Materials Required (Include an itemized list of material and labor): *(To be completed by NYCHA Representative)*

[Empty box for itemized list of material and labor]



Contract Terms and Conditions

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Terms and Conditions

SUMMARY OF KEY CONTRACT TERMS

1. PROCUREMENT ADDRESS

New York City Housing Authority
Procurement Department
90 Church Street, 6th Floor
New York, New York 10007

2. PAYMENT TERMS

2/10 Net 30

3. ARO

15 days

4. FOB DELIVERED, UNLOADED INSIDE

FOB Delivered, Unloaded Inside

5. SHIP TO / DELIVER TO

VARIOUS DELIVERY POINTS

6. BUYER CONTACT

ROMOLEROUX, JEAN-PAUL
212-306-8404
jean-paul.romo-leroux@nycha.nyc.gov

7. TERM OF CONTRACT

3 years

SPECIAL NOTICES AND CONDITIONS

1. TERM OF CONTRACT

The period of this Blanket Order Agreement ("BOA") will be from 05/17/2021 to 05/16/2024, unless sooner terminated in accordance with the contract.

2. CANCELLATION

This contract may be cancelled at the option of the Authority when the total amount ordered as evidenced by BOA releases issued to the Vendor equals or exceeds the total estimated dollar amount of this contract.

3. QUANTITIES

The amounts or quantities indicated in the Request for Quotations ("RFQ") are merely an estimate or approximate requirements for the Term of the contract and are for bidding purposes only. The Vendor shall be paid only for actual quantities required by the Authority and ordered from time to time by BOA releases, which the Authority will issue to the Vendor on an as needed basis. The Authority does not in any way warrant or represent that the estimated amounts or quantities indicated in the RFQ will be required by the Authority and the Authority may require the Vendor to furnish more or less than the estimated amount or quantity used for bidding purposes. The quantities ordered shall, in aggregate, equal the entire requirements of the Authority during the Term of the contract for the respective items, except as may be modified by the terms of the contract.

The phrase "entire requirements of the Authority" herein above mentioned shall in no event include material of the nature covered by this contract which is furnished during the Term thereof, under contracts of the Authority calling for both the supply and installations or processing of such materials. In addition, the Authority reserves the right on any unanticipated additional requirements of substantial quantities to solicit bids for them in the best interests of the Authority at the discretion of the Authority.

4. DELIVERIES

Deliveries must be made within 15 calendar days after receipt by the Vendor of each BOA release issued by the Authority. Delivery point may be any of the Authority's warehouses, Developments or skilled trades storerooms operated by the Authority located within New York City limits. In the event that, in the opinion of the Authority, emergency conditions require delivery of any item before the specified number of calendar days, and the Vendor is unable to supply the item within the time required, the Authority may secure such item from another source without imposing liability upon either of the parties, or otherwise affecting the terms of the contract.

5. PRICE ADJUSTMENTS (FOR QUOTATIONS BASED ON DISCOUNTS FROM PUBLISHED PRICE LISTS)

A. If revision, increase or decrease, occur in the specified manufacturer's standard published price list subsequent to the bid opening, two copies of such revised price list shall be submitted at once to the Authority (please see Exhibit A hereto). If accepted in whole, or in part, such accepted price list or the accepted parts thereof, will be made a part of the order at the time of acceptance by the Authority, and the discount quoted by the bidder will be applied to the revised list from items ordered thereafter.

B. In the event that the revised price lists are not accepted by the Authority, or are rejected in whole or in part, then the Authority may purchase elsewhere any items for which the price has been revised, but not accepted, without imposing liability on the parties or otherwise affecting the terms of the contract.

C. Only complete manufacturer's standard published price lists are accepted. Copies of price lists or copies of pages taken from price lists are not acceptable.

6. ADDITIONAL GOODS

The Vendor shall honor any BOA releases issued by the Authority under the contract seeking additional quantities of goods.

EXHIBIT A

TO: New York City Housing Authority
Procurement Department
90 Church Street, 6th Floor
New York, New York 10007

DATE: _____

SUBJECT: _____

PURCHASE ORDER NO.: _____

IT IS REQUESTED THAT THE UNIT PRICE(S) FOR THE SUBJECT PURCHASE ORDER BE CHANGED AS FOLLOWS:

| P.O. ITEM NO | FROM | EFFECTIVE DATE | TO | EFFECTIVE DATE |
|--------------|-------|----------------|-------|----------------|
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |

THIS REQUEST IS BASED ON MANUFACTURER'S CHARGE(S) IN LIST PRICE(S) AS FOLLOWS:

| P.O. ITEM NO | FROM | EFFECTIVE DATE | TO | EFFECTIVE DATE |
|--------------|-------|----------------|-------|----------------|
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ |

TWO (2) COPIES OF THE MANUFACTURER'S LIST PRICE(S) IN EFFECT ON EACH OF THE AFORESTATED DATES IS ATTACHED/ENCLOSED TO SUPPORT THIS REQUEST.

NAME OF VENDOR: _____

ADDRESS: _____

BY: _____

SIGNATURE & TITLE

NOTE:

THIS EXHIBIT IS INTENDED TO INDICATE THE FORM AND MANNER IN WHICH APPLICABLE REQUESTS(S) ARE TO BE SUBMITTED. IF CHANGE IS REQUESTED ON MORE THAN THREE (3) ITEMS, AN ATTACHMENT IN THE SAME FORMAT MAY BE SUBMITTED. A SEPARATE REQUEST IS TO BE SUBMITTED FOR EACH INDIVIDUAL MANUFACTURER.

INSTRUCTIONS TO BIDDERS

1. NON-ELECTRONIC SUBMISSION OF BID PROPOSALS

Bidders wishing to submit a bid proposal in hard copy rather than through the Authority's prescribed electronic procurement system shall mail or personally deliver sealed bid proposals to:

New York City Housing Authority
Procurement Department
90 Church Street, 6th Floor
New York, New York 10007

All prices shall be entered and the bid proposal signed in ink.

Hardcopy proposals shall be entered electronically via the spreadsheet, and the spreadsheet should be recorded on a non-returnable CD-Rom or USB flash drive.

For bid proposals delivered by hand, by mail, or by express mail services, the outside envelope must state the following: Bid enclosed, Bid date and Time of opening. If this information is missing the envelope may not be accepted.

Bidders must pay a \$25 non-refundable processing fee, payable to NYCHA by United States Postal Service Money Order or Certified Check only, for each bid submitted in hard copy. Such fee must be remitted to NYCHA's Finance Department located at 90 Church Street, 6th floor, New York, New York 10007. Bidders must obtain a receipt from the Finance Department and include a copy of such receipt with their bid proposal. NYCHA will not process any bid proposal submitted without this receipt and will deem the bidder non-responsive.

2. LATE BID PROPOSALS

Late bid proposals shall be those which, for any reason whatsoever, including delay in the U.S. mail, are received at the Authority's offices after the time specified for such opening. Late bid proposals will not be accepted by the Authority.

3. BID PRICING

(a) NO ALTERNATE/ADDITIONAL BIDS. Only one (1) bid price for each line item offered will be considered in determining the lowest responsible and responsive Bidder. Any additional or alternate bids offered will not be used in the evaluation process of selecting the successful Bidder. Bidder's failure to comply with any of the above may be reason for considering the bid offered as non-responsive.

(b) DISCOUNTS. Bid prices should include all applicable discounts ("Discount(s)"), including but not limited to trade and cash, as part of the bid proposal. Discounts will be included in the Authority's calculations to determine the low Bidder. Further, any early payment discount will be taken calculated from the date the invoice is received by the Authority's Accounts Payable Division in accordance with the payment procedures established in paragraph 7 "Payments" of the General Terms and Conditions herein.

(c) UNIT PRICES. In cases of any conflict between the Unit Price or Discount and the Extension, the Unit Price with Discount shall govern. In the event the total or Extension of the Unit Price with Discount is arithmetically incorrect, the bid proposal shall be evaluated and considered on the basis of the Unit Price with Discount and the correct total or Extension. If the Unit Price with Discount is omitted, the Unit Price with Discount will be computed by the Authority on the basis indicated by the Extension or total amount.

(d) EXEMPTION FROM TAXES. Sales to the Authority are exempt from the payment of federal, state, and city sales and excise taxes. Bid prices should be

net, excluding such taxes.

(e) **LOW BIDDER.** The Authority may use the following criteria in determining the low Bidder: unit price, discount, delivery cycle time or ARO (as defined in Section 4 of the General Terms and Conditions below), transportation costs, and tariffs and duties as required.

4. DELIVERY

If the delivery time(s) set forth in the bid proposal is later than the delivery time(s) indicated in the delivery schedule set forth in the Request for Quotations ("RFQ"), the Authority, in its discretion, may deem the bid proposal non-responsive. All bids for merchandise delivery via Bidder truck or common carrier are to be shown on the bid two ways 1) as free on board ("FOB") destination, freight prepaid, loaded, inside and 2) as FOB destination freight collect, unloaded inside. When delivery is made using a Bidder truck, include a delivery charge or freight allowance for the collect option, to be invoiced to the Authority as a separate charge. The Authority will have the sole discretion to determine which method it prefers.

5. CONFORMANCE TO SPECIFICATIONS

Bidders offering item(s) other than the Bid Standard (as defined in Section 3 of the General Terms and Conditions below) shall indicate manufacturer's name and model numbers of item(s) being offered and include descriptive literature of such material when submitting their proposals. Failure to comply with this procedure will obligate the successful Bidder (the "Vendor") to furnish the Bid Standard item at the unit price submitted. If requested by the Authority representative, sample(s) of such item(s) must be submitted, at no charge, within ten days after request. Failure to comply will cause the bid to be considered non-responsive.

6. MATERIAL SAFETY DATA SHEETS

The Bidder represents that included with their bid proposal is a current legible Material Safety Data Sheet for items that will be supplied to the New York City Housing Authority pursuant or incidental to this bid proposal/purchase order. The Bidder represents that the tendered Material Safety Data Sheet is the most current, relevant printed information available in lieu of providing a relevant Material Safety Data Sheet, the Bidder may tender with their bid a certification that no Material Safety Data Sheet is required by any regulatory agency of any government.

7. SAMPLES

Upon the Authority's request and at no charge to the Authority, the Bidder must submit a sample for each bid item, such product sample must be representative in all respects to what the Bidder intends to provide the Authority under actual deliveries. The sample must be delivered to the Authority within ten (10) business days after such request and any sample submitted will remain the property of the Authority. Failure to submit a sample as requested may result in the Authority's determination that the Bid is non-responsive. Only one sample will be accepted by the Authority. No correction of deficiencies in the sample will be allowed, unless the Authority, in its sole discretion, determines that special circumstance exist such that the submission of a second sample should be permitted in a particular case.

The Authority will examine and assess the sample to determine whether it complies with the specifications set forth in the RFQ. The Authority may subject the sample to various kinds of comparisons and assessments ranging from visual inspection and evaluation to chemical and physical laboratory testing and/or in-use applications. During the term of the resulting contract, the Authority may use the results of such assessments and tests to establish the quality of the merchandise delivered.

8. EVIDENCE OF ABILITY TO PERFORM

To qualify as a Vendor, a Bidder must, upon the Authority's request, demonstrate to the Authority's satisfaction that it has the skill and experience, as well as the necessary facilities and financial resources to meet the requirements of a contract. Upon the Authority's request, the Bidder shall submit evidence that will establish to the satisfaction of the Authority that the Bidder (i) is qualified and able to furnish the merchandise on which it bids and to deliver them in the manner and time specified in the RFQ; (ii) is actively engaged in the regular sale and distribution of the merchandise specified in the RFQ and has been so engaged for at least one year; (iii) maintains at its place of business sufficient stock of the items solicited so that it is able to meet the Authority's requirements in the specified time frame; (iv) has secured the necessary licenses, permits or certificates required by any legislative or regulatory body having jurisdiction, to carry on the business of furnishing the merchandise on which the bid was submitted; and (v) is adequately financed and has sufficient resources and trade credit to fulfill the terms of the contract.

Before or after making an award of a contract, the Authority may choose to inspect the premises where merchandise are manufactured, prepared or stored. When the source of production is outside the City of New York, the Authority may require the Bidder to submit satisfactory evidence that the merchandise proposed for delivery is in every respect what it is represented to be.

If the evidence required in the paragraphs above, is not furnished within the required time or if, upon examination of such evidence or other inspection of the Bidder's plant or premises, the Authority, in its sole discretion, determines that the Bidder does not comply with the requirements set forth in the RFQ, the Authority shall have the right to reject the bid as non-responsive. Should such non-compliance be discovered after a contract has been issued, the Authority shall have the right to cancel and terminate the contract and/or declare the Vendor in default, in addition to any other remedies provided for in the contract or at law or in equity.

9. FINANCIAL QUALIFICATIONS

The Authority may require any Bidder to furnish all books of account, records, vouchers, statements or other information concerning the Bidder's financial status for examination as may be required by the Authority to ascertain the Bidder's responsibility. If the Bidder fails or refuses to supply any of the documents or information requested pursuant to this paragraph, the Authority may reject the bid as non-responsive.

10. ACCEPTANCE OF PROPOSAL

Each bid proposal constitutes a binding offer by the Bidder to perform the contract at the bid price. All bids shall be based upon the RFQ without change. Any bid based upon a proposed modification of these terms may be rejected. A bid proposal may not be withdrawn within a period of 120 days after the bid opening date. The acceptance of the bid proposal will be solely by the issuance of a written Purchase Order (the "PO") or Blanket Order Agreement (the "BOA") signed by an authorized officer of the Authority. POs and BOAs are also referred to herein more generally as "contracts." The Authority reserves the right to reject bid proposals in whole or in part, or to make the award by item, or class of items as indicated in the RFQ. Individual items may be grouped and award made by class total, which may be split at the discretion of the Authority without the Bidder's consent if it is in the best interest of the Authority.

If a Bidder omits to bid on items of a class, the value of which omission does not exceed 5% of the total value of the class, or where any items are otherwise unacceptable in a similar proportion, the bid may be considered provided it is the low bid of the class total on the remaining items.

11. REQUEST FOR BID RELEASE

- (a) Each bid/proposal constitutes a binding offer by the bidder to perform the Contract at the bid price. No bids/proposals may be withdrawn within a period of 120 calendar days after the date of opening of the bids. This 120-day period, as it applies to a particular bidder, shall be extended, day for day, by the period of any delay caused by or attributable to, the bidder, including, without limitation, (i) any delays resulting from the Authority's investigation of an (unsuccessful) request by the bidder for a bid release, and (ii) any delays by the bidder in submitting the insurance, performance bonds, or payment bonds required by the Contract or in providing any information requested by the Authority.
- (b) After the opening of bids, requests for the withdrawal of a bid can be made by a bidder on the grounds that there was an arithmetic or clerical error in the bid submitted. All requests for a bid release must be made in accordance with this Section 11 and will be considered in accordance with applicable NYCHA procedures including, but not limited to, Article VII of the Authority's Contract Procedure Resolution and Authority Standard Procedure 002:59:1, referenced therein, which provides that a bidder seeking a bid release must submit a written, dated and signed request for release from the bid ("Release Request") to the department of the Authority that issued the solicitation for bids (the "Originating Division"), no later than three business days from the bid opening. The bidder's signature on the Release Request must be duly acknowledged and witnessed by a notary public. The Release Request must set forth the reasons for the request and should be accompanied by any supporting documentation. Any additional information reasonably requested by the Originating Division must be submitted within the time period reasonably established by the Originating Division in order to expedite consideration of the Release Request. Failure of a bidder to comply with a request for information within the specified time period may result in a resolution of the Release Request without the consideration of any information subsequently submitted by the bidder in an untimely manner. Requests for withdrawal may be granted by the Authority in any case when the Authority determines the claim of mistake is justified or when the grant of such request is otherwise in the best interest of the Authority.
- (c) In the case of a bidder's first Release Request in any 12-month period, no administrative charge shall be imposed. If the Release Request is granted, the bidder will be advised in writing that if a second request for release is made within 12 months after the date on which the first request was received by the Authority, the bidder may, in the discretion of the Director/Program Administrator of the Originating Division, be disqualified from bidding on any Authority contract for up to a

maximum of one (1) year after the second Release Request is received by the Authority. In the case of the bidder's second Release Request in any 12-month period, regardless of whether such Release Request is granted, the Director/Program Administrator of the Originating Division may disqualify the bidder for up to a maximum of one (1) year from the date the second Release Request is received by the Authority, and may impose an administrative charge of up to \$500.00 against the bidder.

(d) A bidder submitting a Release Request may be deemed to have made a second Request Release for the purposes of **Section 11(c)** above if it is a successor, assignee, subsidiary or affiliate of a previously released bidder; or if any of the bidders officers, directors, partners shareholders, joint venture participants, principals or other persons substantially involved in its contracting activities was also an officer, director, partner, shareholder, joint venture participant, principal or other person substantially involved in the contracting activities of the previously released bidder; or if it was organized or established or operates in a manner designed to evade the purpose of this **Section 11**, any Authority procedure, or any other law, rule, regulation or Authority procedure relating to the procurement or performance of a contract. In addition, in determining the number and timing of Release Requests submitted by a bidder, the Authority will consider Release Requests submitted by the bidder to any construction manager performing construction management services for the Authority.

12. MEETING WITH AUTHORITY PERSONNEL

Please note that if at any time you wish to meet with Authority personnel, it is imperative that you make an appointment in advance with each individual you wish to see. In addition, you must sign in when you arrive for any such appointment.

13. ELECTRONIC TRANSMISSIONS

All Bidders/Vendors shall be capable of accepting orders VIA U.S. mail, facsimile, and electronic data interchange ("EDI"). In this award, EDI is construed to mean personal computer based on-line electronic access capability. Bidders/Vendors offering EDI must have on-line computer capability of receiving supply orders from the Authority's Supply Chain Operations. The Order Entry System shall allow Supply Chain Operations to enter orders and shall have full order inquiring capabilities. All orders (FAX, manual and EDI) shall reference requisition, BOA release number and/or PO number as required.

14. BAR CODE NOTIFICATION

Supply Chain Operations is employing a Bar Code System that will facilitate and expedite the receipt and payment process. The system is able to read any one dimensional Bar Code, e.g., Code 128, 39, UP6, 12 of 5, EAN, Codebar; etc. The required data to be read is the following: Purchase Order Number.

15. VENDEX SUBMISSIONS

All bidders must complete both a VENDEX Vendor Questionnaire and a VENDEX Principal Questionnaire(s) (collectively the "**Questionnaires**") and submit all Questionnaires to the New York City Mayor's Office of Contract Services ("**MOCS**") before their bids can be considered and evaluated by the Authority. Bidders that presently have valid, accurate, up-to-date Questionnaires on file with MOCS must submit to the Authority two original Certificates of No Change. A bidder's failure to fully complete and submit either of the Questionnaires to MOCS or Certificate of No Change to the Authority (as applicable) may result in a determination by the Authority that the bidder is non-responsive and ineligible for award of the Contract. If a bidder omits any answer or provides a partial answer to any of the questions on either Questionnaire or the Certificate, the Authority will consider said document to be incomplete. Information regarding VENDEX is available on the MOCS website accessible at <http://www.nyc.gov/html/mocs/html/home/home.shtml> <last accessed on May 13, 2014>.

16. SUBMISSION OF DOCUMENTATION REQUIRED BY RFQ

Bidders are reminded to submit with their bid proposal all affidavits, certifications, or other documentation and forms as may be required by the Authority in the RFQ. Bidders failing to submit requested documents will be deemed non-responsive and ineligible for award of the Contract.

17. NON-COLLUSIVE BIDDING CERTIFICATION

By submission of the bid proposal each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid proposal each party

thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief the prices in this bid proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other Bidder or with any competitor.

A bid proposal shall not be considered for award nor shall any award be made where (a) below has not been complied with by the Bidder.

The fact that a Bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being proposed, does not constitute, without more, a disclosure within the meaning of paragraph (a) of this certification.

Any bid proposal hereafter made to any municipal housing authority by a corporate Bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such proposal contains the certification referred to in paragraph (a) of this subdivision, shall be deemed to have been authorized by the board of directors of the Bidder, and such authorization shall be deemed to include the signing and submission of the bid proposal and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

18. GRAND JURY TESTIMONY

By submitting a bid proposal, the Bidder expressly states, warrants, and represents, unless otherwise expressly stated in writing upon or accompanying the bid proposal, that no person who is a Member, Director, Managing Agent or Officer of the Bidder (when the Bidder is a corporation), submitting a bid as a corporation, or as a joint venture together with a corporation, has, prior to the submission of such bid proposal, when called before a grand jury to testify concerning any transaction or contract had with the State of New York, any political subdivision thereof, a public authority or with any department, agency or official of the State of New York, or any political subdivision thereof or of a public authority, refused to sign a waiver against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract. In the event there has occurred such refusal, a full written statement of the time and circumstances thereof shall accompany the bid proposal.

19. SUPPLY MANAGEMENT DEPARTMENT PLAN FOR SUSTAINABLE PROCUREMENT OF GREEN AND ENERGY EFFICIENT PRODUCTS

SMD aims to engage in sustainable procurement, within the guidelines of city, state and federal law, of environmentally friendly products whose quality function and cost are equal to or superior to more traditional products. SMD intends to solicit products at competitive marketplace prices from vendors, including manufacturers and distributors, who are striving for sustainability in their products, methods of manufacture, and supply chains. All bidders are encouraged to read Supply Chain Operations Plan for Sustainable Procurement of Green and Energy Efficient Products, which will be provided with all RFQs, and to provide "green" equivalents when bidding. Bidders can indicate their "green" equivalents in the RFQ section as an attachment or as a "quote line note."

GENERAL TERMS AND CONDITIONS

1. TERMS

All bid proposals, all POs, and all BOAs are subject to the Instructions to Bidders and General Terms and Conditions, unless modified by the Authority within the Special Notices and Conditions of the PO or BOA.

2. COMPLIANCE WITH LAWS AND REGULATIONS

The Vendor shall comply with all applicable laws, ordinances, regulations and codes of federal, state, municipal governments as well as all rules, regulations and notices of any governmental authority or agency having jurisdiction over, or interest in, the Authority affecting the items supplied to the Authority under any contract awarded to the Vendor.

3. MERCHANDISE

Description of an article in the RFQ by a brand name or catalogue number (both hereinafter referred to as "Bid Standard") or "equal", indicates the character and quality of the article required, and Bidder may name such equal in the bid. If Bidder fails to name such equal as a substitute, then delivery of the Bid Standard will be required.

When the description of an article in the bid proposal is based on a standard specification of the Authority or other agency, no substitutes or alternates will be considered unless otherwise specified in the RFQ.

Unless otherwise stated, all merchandise must be new and unused. All merchandise which is customarily labeled or identified must have securely affixed thereto the original label or marking of the manufacturer. All merchandise of a time sensitive nature must have their expiration dates clearly marked on each carton or individual item. The Authority will not accept any merchandise with an expiration date that is less than twelve (12) months after the date of receipt.

4. DELIVERY

As stated above, all bids for merchandise delivered via Vendor truck or common carrier are to be shown on the bid two ways 1) as FOB destination, freight prepaid, loaded, inside and 2) as FOB destination freight collect, unloaded inside. When delivery is made using a Vendor truck, Bidders shall include a delivery charge or freight allowance for the collect option, to be invoiced to the Authority as a separate charge. The Authority will have the sole discretion to determine which method it prefers. The Authority may accept the delivery charge or allowance, or arrange its own transportation on a delivery by delivery basis as requested by the Authority and deduct the allowance from the invoice. Time of delivery shall be between the hours 8 A.M. and 3 P.M. Monday through Friday, unless otherwise indicated. All deliveries must be scheduled with Authority personnel at least forty-eight (48) hours in advance. Merchandise may be returned if prior arrangements are not made with the delivery location(s). All warehouse-merchandise must be shrink-wrapped with clear plastic and palletized on non-returnable pallets. Delivery truck trailer length cannot exceed 45 feet in length.

The Authority will not accept an overage in any amount, but will accept partial shipments with the option to cancel the balance of the order at the Authority's discretion. In case of partial shipments, Vendors are required to indicate on both the packing slip and the invoice that this is a "Partial Shipment" and must indicate that "Balance Back Ordered." Payment will be made, only for items actually delivered and accepted by the Authority.

The Vendor shall ensure that each delivery made to the Authority is pursuant to and in accordance with the quantity specified, project specification and to the correct delivery point as printed below. In addition to and not in limitation of any rights the Authority may have against the Vendor, the Authority may adjust the total amount of any invoice where inside delivery was specified but was not performed by the Vendor or their delivery agent. The Vendor is responsible for any and all duplicate deliveries and/or over-shipments. The Authority may not pay for any duplication of deliveries and/or over-shipments.

Vendors shipping merchandise via parcel or common carrier are to provide the Authority with a tracking number upon shipment of the merchandise. This information is to be forwarded via e-mail to the address indicated on the PO or BOA release. Vendors must identify on all shipments and invoices their Purchase Order number or release number for proper receipt and payments.

Any deviation from these requests may cause delay in the payment of invoices.

5. DELAYS

Time shall be the essence in the delivery of all items in the PO or BOA release. If the Vendor fails to make delivery within the time specified, or if the delivery is rejected, the Authority may, notwithstanding the above Section 4, obtain the merchandise specified, or equal, or any part thereof, from other sources, with or without competitive bidding, and charge the excess cost thereof, plus the cost of reordering and all other costs incurred by the Authority, to the Vendor. In addition, the Authority may, at its option, cancel and terminate either the entire PO or BOA, or such part thereof as relates to the item or items as to which default in delivery has occurred. In such event, the Vendor shall be liable, for the balance of the term of the PO or BOA, for the cost of reordering or rebidding, for the difference in cost to the Authority of the item or items so cancelled, and any other additional administrative costs associated with the delay. Nothing herein contained shall limit any other right or remedy of the Authority which respect to late or improper delivery.

The Vendor will deliver the merchandise within the timeframe agreed to in their bid, which in no event shall exceed 15 calendar days after the Vendor's receipt. This timeframe is referred to by the Authority as the After Receipt of Order ("ARO") and is the number of days from the time the order is sent to the Vendor until the merchandise is to be received by the Authority. As stated above, Vendors that do not meet the agreed upon ARO are subject to cancellation of the contract.

6. ACCEPTANCE OF MERCHANDISE

No merchandise shall be deemed accepted by the Authority until it has actually been inspected and found satisfactory by the Authority, regardless of the length of time that may elapse between delivery of the merchandise and its inspection, and regardless of whether or not payment for the merchandise may have been

made before such inspection. In the event that the Authority determines that delivered merchandise is unsatisfactory, the Authority will provide written notice to the Vendor that such merchandise has been rejected as unacceptable. Upon notification of rejection, merchandise shall be immediately removed by the Vendor and, at the Authority's discretion, replaced with acceptable merchandise. If left longer than 30 days, merchandise will be regarded as abandoned and the Authority shall have the right to dispose of it as its own property and charge the Vendor for the costs associated with such disposal. Nothing herein contained shall limit any other right or remedy of the Authority with respect to merchandise not in accordance with the PO or BOA.

The Vendor will allow the Authority to return merchandise for credit or cash reimbursement at the Authority's discretion provided that 1) the merchandise is returned in saleable condition and 2) the merchandise is not considered to be obsolete and not sellable.

7. PAYMENT

All Vendors entering into a BOA with the Authority are requested to accept payment for merchandise via Electronic Funds Transfer ("EFT"): Vendors with PO's are not required to accept EFT. The Authority will endeavor to make payment within 30 days via EFT after receipt of an invoice in a form acceptable to the Authority and any other additional supporting documents required by the Authority from the Vendor. The Authority will not pay any interest, late charge or penalty with respect to any payments under the PO or BOA.

An invoice must identify the merchandise and quantities of such merchandise that were delivered and accepted by the Authority, the dates of such deliveries and their Purchase Order number or release number for proper receipt and payments. Such invoice is not to be submitted until after delivery has been made. If deliveries are to be made over an extended period, invoices may be submitted at the beginning of each calendar month for deliveries made during the preceding month. Vendors are not to invoice the Authority until materials have been shipped. Invoices received prior to actual shipment may be returned. All invoices must be for actual amounts shipped and received. If partial shipments are made, invoice only for those amounts, not for total order amounts. In case of partial shipments, vendors are required to indicate on both the packing slip and the invoice that this is a "Partial Shipment" and must indicate that "Balance Back Ordered."

All invoices can be mailed, faxed or emailed. The mailing address is: New York City Housing Authority Disbursements, Post Office Box 3636, New York, NY 10008-3636. For questions regarding invoices, please call Disbursements at (212)306-6500.

Vendors not capable to receive payment via EFT must submit a letter at the time of bid proposal submission describing in detail as to why an alternative method of payment is necessary. If the Authority accepts the alternate method of payment, the Vendor will still be responsible to provide any cash discount noted below as if payment was via EFT.

8. MODIFICATION

No contract may be modified except by a written instrument signed by an authorized officer of the Authority.

9. ASSIGNMENTS

No assignment of a contract or any monies due thereunder shall be valid without the written consent of the Authority.

10. SUBCONTRACTS

In accordance with Section 17 herein, when issuing solicitations for subcontractors, the Vendor shall take affirmative steps to include minority-owned, women-owned, and small business enterprises since it is the policy of the Authority to ensure that all businesses have an equal opportunity to participate in all aspects of the Authority's procurement of goods and services. The Vendor shall state in all solicitations or advertisements for bids

for subcontractors placed by or on behalf of the Vendor that all qualified applicants will receive consideration for subcontracts without regard to the race, color, religion, military service, national origin, sex, age, disability, marital status or sexual orientation of the owners, partners, management or stockholders of a business.

The Contractor shall not subcontract with any parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the Executive Orders 12549 and 12689 and implementing regulations at 2 CFR 180.

11. TERMINATION FOR CONVENIENCE

The Authority shall have sole discretion to terminate any contract at any time for its convenience upon not fewer than five (5) days prior written notice to the Vendor of the Authority's intention to terminate. Such termination may be for any reason or for no reason. After receipt of such notice, the Vendor shall cease all work under the contract, unless otherwise directed in the notice. The Vendor agrees that the Authority will be responsible to the Vendor for only those costs permitted pursuant to the provisions of the contract, as supported by original invoices and documentation, that the Vendor incurred prior to the termination of the contract.

12. PROVISIONS OF LAW DEEMED INSERTED

It is the intent and understanding of the parties to this contract that each and every provision of law required to be inserted in this contract shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is deemed to be inserted herein, and if, through mistake or otherwise, any provision is not inserted herein or is not inserted in correct form, then this contract shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law, without prejudice to the rights of either party.

13. OFFICIALS NOT TO BENEFIT

No member of the City Council, head of a department, chief of a bureau, deputy thereof, or clerk therein or any other officer or employee of the City of New York, the Authority, or of the State of New York, during his tenure or for one year thereafter, shall be or become interested, directly or indirectly as contracting party partner, stockholder, surety or otherwise in this contract, or in the performance thereof, or in any portion of the profits thereof.

14. PATENTS

The Vendor shall indemnify the Authority against all liability for patent infringement arising out of the purchase or use of any of the merchandise supplied by the Vendor.

15. LABOR CONDITIONS

(a) In the event that the contract involves the performance of work other than mere delivery at any Authority Development or other Authority location, the Vendor agrees to comply with the provisions of Article VIII of the New York State Labor Law.

(b) In the hiring of employees for the performance of any and all work in connection with this contract, no Vendor nor any person acting on behalf of such Vendor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates nor shall the Vendor nor any person on his behalf, in any manner discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, sex or national origin. There shall be deducted from the amount payable to the Vendor by the Authority under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of these provisions. This contract may be cancelled or terminated by the Authority, and all monies due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract.

16. EQUAL OPPORTUNITY CLAUSE

During the performance of a contract, the Vendor agrees as follows:

I. PRIOR TO AWARD OF CONTRACTS OF \$250,000 OR MORE.

(1) Prior to the award of any contract of \$250,000 or more, the low Bidder, if requested by the Authority's Department of Equal Opportunity, shall attend a meeting for the purpose of acquainting such Bidder with the statutory and contractual requirements and specific measures which shall constitute an affirmative program of implementation.

(2) At the pre-award conference prior to the award, the Vendor shall submit to the Equal Opportunity Department a written compliance Inspection Report (EOD/C6) enumerating the number of workers in each classification, by race, sex and ethnic distribution. This Report must contain an acceptable Equal Employment Opportunity Statement of Policy.

The Vendor shall also discuss the specific steps under way for providing members of minority groups and women with equal opportunity in training, apprenticeship programs, journeymen recruitment and all other aspects of employment. The result shall be to assure the equitable employment of minority

group members and women in all trades and all phases of the contract, as well as in the company.

II. DURING THE PERFORMANCE OF ALL CONTRACTS

(1) The Vendor will not discriminate against any applicant for employment because of race, color, religion, sex or national origin. The Vendor will take affirmative action to ensure that employees are treated during employment without regard to their race, color, religion, sex or national origin. Affirmative Action means that the Vendor and/or subcontractor must take positive steps to recruit and employ qualified or qualifiable minority group members and women in all job categories of work and advancement.

Such action shall include, but not be limited to, the following: employment, up-grading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity clause.

(2) The Vendor will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Vendor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers representatives of the Vendor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Vendor will comply with all provisions of Presidential Executive Order 11246 of September 24, 1965 (the "Executive Order"), and of the rules, regulations and relevant orders of the United States Department of Labor ("USDOL").

(5) The Vendor will furnish all information and reports required by the Executive Order, and by rules, regulations and orders of the USDOL, or pursuant thereto, and will permit access to his books, records, and accounts by United States Department of Housing and Urban Development ("HUD") and the USDOL for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Vendor's noncompliance with the Equal Opportunity clause of the contract or with any of the said rules, regulations or orders, the contract may be cancelled, terminated or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in the Executive Order, and such other sanctions may be imposed and remedies invoked as provided in the Executive Order, or by rule, regulation or order of the USDOL, or as otherwise provided by law.

(7) The Vendor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraph (1) through (7) in every subcontract unless exempted by rules, regulations, or orders of the USDOL issued pursuant to the Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract as HUD may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Vendor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by HUD, the Vendor may request the United States to enter into such litigation to protect the interest of the United States.

17. MINORITY, WOMEN AND SMALL BUSINESS ENTERPRISE INCLUSION

In furtherance and not in limitation of Section 10 above, minority-owned, women-owned and small business enterprises ("MWSBE") shall be given an equal opportunity by the Vendor to submit proposals to the Vendor for consideration of subcontracting awards in connection with the contract as NYCHA is committed to maximizing MWSBE participation in the Authority's contracting process. Accordingly, and consistent with all applicable federal orders, rules, and regulations, all feasible efforts shall be made by the Vendor to ensure that MWSBE firms are used when possible in connection with the contract. Such efforts shall include, but not be limited to, the following:

- A. including MWSBE firms, when qualified, on solicitation mailing lists;
- B. encouraging MWSBE firms to participate through direct solicitation of bids or proposals whenever they are potential sources for goods or services under the contract;
- C. dividing the total contract requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MWSBE firms; and
- D. establishing delivery schedules, where the contract permits, which encourage participation by MWSBE firms.

Further, for contracts of \$250,000 or more, within 10 calendar days after the award of the contract to the Vendor (the "Covered Vendor"), the Covered Vendor shall complete and submit a Minority, Women and Small Business Inclusion Report to the Authority's Department of Equal Opportunity Office of Business Opportunities. This report will be provided by the Authority to the Covered Vendor contemporaneously with contract award. Additionally, throughout the term of the contract, the Covered Vendor shall submit this completed report every January 31 (reporting activity from July 1 through December 31) and July 31 (reporting activity from January 1 through June 30).

MWSBE means minority-owned, women-owned, and small business enterprises defined as follows:

A. Minority business enterprise means a business that is at least 51% owned by one (1) or more minority group members; or, in the case of a publicly-owned business, one (1) in which at least 51% of its voting stock is owned by one (1) or more minority group members, and whose management and daily business operations are controlled by one (1) or more such individuals. For this purpose, minority group members include: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Native American or Alaskan native persons having origins in any of the original peoples of North America; (iv) Asian and Pacific Islander persons having origins in any of the Far East countries, Southeast Asia, the Indian subcontinent or the Pacific Islands; and (v) those groups of United States citizens or resident legal aliens designated by the Small Business Administration or any group designated by the Secretary of the United States Department of Housing and Urban Development.

B. Women business enterprise means a business that is at least 51% owned by one (1) or more women who are United States citizens or resident legal aliens; or, in the case of publicly-owned businesses, one (1) in which at least 51% of the stock is owned by one (1) or more women who are United States citizens or resident legal aliens, and whose management and daily operations of the business are controlled by one (1) or more such women.

C. Small business enterprise means a business that is owned by one (1) or more persons who are United States citizens or resident legal aliens, with a place of business located in the United States, operates primarily within the United States and is sized consistently with the requirements set forth in 13 CFR Section 121.201, which defines size standards for small businesses, based on either annual receipts or the number of employees.

18. INVESTIGATIONS

- (a) The parties to the Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (**State**) or City of New York (**City**) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of the Authority with respect to the transaction, submitted bid, submitted proposal, agreement, Contract, lease, license, or person dealing with the Authority that is the subject of the investigation, audit or inquiry.
- (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, Contract, lease or license entered into with the Authority, the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;
- (2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the Authority, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, Contract, lease or license entered into with the Authority, the City, the State, or any political subdivision thereof or any local development corporation within the City; then;
- (3) The Chair and Chief Executive Officer (the **Chair and CEO** of the Authority, or his/her designee, shall convene a hearing, upon no less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- (4) If any non-governmental party to the hearing requests an adjournment, the Chair and CEO of the Authority, or his/her designee, may, upon granting the adjournment, suspend any agreement, Contract, lease or license with such party pending the final determination pursuant to subsection (b) below without the Authority incurring any penalty or damages for delay or otherwise.
- (b) The penalties which may attach a final determination by the Chair and CEO of the Authority, or his/her designee, may include but shall not exceed:
- (1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any agreement, contract, lease or license with or from the Authority; and/or
- (2) The cancellation or termination of any and all such existing Authority agreements contracts, leases or licenses that the refusal to testify concerns and that have not been assigned as permitted under the agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the Authority incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the Authority.
- (c) The Chair and CEO of the Authority, or his/her designee, shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Articles (1) and (2) immediately below. He or she may also consider, if relevant and appropriate, the criteria established in Articles (3) and (4) immediately below in addition to any other information which may be relevant and appropriate;
- (1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
- (2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
- (3) The nexus of the testimony sought to the subject entity and its agreements, contracts, leases or licenses with the Authority.
- (4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subsection (b) above, provided that the party or entity has given actual notice to the Chair and CEO of the Authority, or his/her designee, upon the acquisition of the interest, or at the hearing called for in Section 18(a)(3) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- (d) Definitions Used in this Section
- (1) The term license as used herein shall be defined as a license not granted as a matter of right.
- (2) The term person as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (3) The term entity as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, or leases from the Authority or otherwise transacts business with the Authority.
- (4) The term member as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
- (e) In addition to and notwithstanding any other provision of this Contract, the Chair and CEO of the Authority, or his/her designee, may in his or her sole discretion terminate the Contract upon not less than three (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of the Department of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the Authority or other person, firm corporation or entity for any purpose which may be

related to the procurement or obtaining of the Contract by the Contractor, or affecting the performance of the Contract.

SUPPLEMENTAL CLAUSE 1. RIGHT TO AUDIT, MAINTENANCE OF BOOKS AND RECORDS

The Authority, any agency providing funds to the Authority, the Office of the Inspector General for the Authority, and the Comptroller General of the United States have the right to perform an audit of Vendor's finances and the books and records related to its performance under the Contract, including, without limitation, the financial arrangement with anyone that Vendor may delegate to discharge any part of its obligations under the Contract. Vendor must provide, and must cause each of its subcontractors to provide, access by the Authority, any agency providing funds to the Authority, the Office of the Inspector General for the Authority, the Comptroller General of the United States or any of their duly authorized representatives to any books, documents, papers, records and supporting documentation of Vendor and such Subcontractors that are directly pertinent to the Contract for the purpose of making audit, examination, excerpts, duplicate photocopies and transcriptions.

In order to permit the making of audit, examination, excerpts, duplicate photocopies and transcriptions by the Authority, any agency providing funds to the Authority, the Office of the Inspector General for the Authority, the Comptroller General of the United States or any of their duly authorized representatives, Vendor agrees to maintain all records and supporting materials for the Services for a period of six years following the later of (i) the end of the duration of the Contract, or (ii) such time as the Authority makes final payments and all other pending matters related to the Contract (including, without limitation, litigation, claims and appeals) are closed (the Retention Period). Prior to the expiration of the Retention Period, NYCHA, in its sole discretion and upon written notice to the Vendor, may extend the Retention Period for an additional one-year.

SUPPLEMENTAL CLAUSE 2. INVESTIGATIONS

(a) The parties to the Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (**State**) or City of New York (**City**) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of the Authority with respect to the transaction, submitted bid, submitted proposal, agreement, Contract, lease, license, or person dealing with the Authority that is the subject of the investigation, audit or inquiry.

(1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, Contract, lease or license entered into with the Authority, the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

(2) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly

or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the Authority, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, Contract, lease or license entered into with the Authority, the City, the State, or any political subdivision thereof or any local development corporation within the City; then;

(3) The Chair and Chief Executive Officer

(the **Chair and CEO**) of the Authority, or his/her designee, shall convene a hearing, upon no less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(4) If any non-governmental party to the hearing requests an adjournment, the Chair and CEO of the Authority, or his/her designee, may, upon granting the adjournment, suspend any agreement, Contract, lease or license with such party pending the final determination pursuant to subsection (b) below without the Authority incurring any penalty or damages for delay or otherwise.

(b) The penalties which may attach to a final determination by the Chair and CEO of the Authority, or his/her designee, may include but shall not exceed:

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any agreement, contract, lease or license with or from the Authority; and/or

(2) The cancellation or termination of any and all such existing Authority agreements, contracts, leases or licenses that the refusal to testify concerns and that have not been assigned as permitted under the agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the Authority incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the Authority.

(c) The Chair and CEO of the Authority, or his/her designee, shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Articles (1) and (2) immediately below. He or she may also consider, if relevant and appropriate, the criteria established in Articles (3) and (4) immediately below in addition to any other information which may be relevant and appropriate;

(1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(3) The nexus of the testimony sought to the subject entity and its agreements, contracts, leases or licenses with the Authority.

(4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subsection (b) above, provided that the party or entity has given actual notice to the Chair and CEO of the Authority, or his/her designee, upon the

acquisition of the interest, or at the hearing called for in Section 61(a)(3) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

(d) Definitions Used in this Section:

- (1) The term license as used herein shall be defined as a license not granted as a matter of right.
- (2) The term personas used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (3) The term entity as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, or leases from the Authority or otherwise transacts business with the Authority.
- (4) The term member as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

(e) In addition to and notwithstanding any other provision of this Contract, the Chair and CEO of the Authority, or his/her designee, may in his or her sole discretion terminate the Contract upon not less than three (3) days written notice in the event the Contractor fails to promptly report in writing to the Commissioner of the Department of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the Authority or other person, firm corporation or entity for any purpose which may be related to the procurement or obtaining of the Contract by the Contractor, or affecting the performance of the Contract.

SUPPLEMENTAL CLAUSE 3. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

If the Contract's maximum amount is over \$100,000 and the Work involves the employment of mechanics and laborers, the Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USCS 3701 et seq. (formerly at 40 U.S.C. 327-330)) as supplemented by Department of labor regulations (29 CFR Part 5).

SUPPLEMENTAL CLAUSE 4. ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees and shall obtain all licenses to use any third-party intellectual property in connection with the Work so as to vest in the Authority good and complete title with respect to the ownership of all such Work. It shall defend all suits or claims for infringement of any patent rights and shall save the Authority harmless from loss on account thereof; except that the Authority shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Authority. Failure to give such notice shall make the Contractor responsible for resultant loss.

SUPPLEMENTAL CLAUSE 5. 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 (the **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: (i) are not reasonably available in a reasonable period of time; (ii) 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 (iii) are only available at an unreasonable price. (b) Subsection (a) shall apply to items purchased under the Contract where: (i) the Contractor purchases in excess of \$10,000 of the item under the Contract; or (ii) during the preceding Federal fiscal year, the Contractor: (A) 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 (B) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

SUPPLEMENTAL CLAUSE 6. BYRD ANTI-LOBBYING AMENDMENT

If the Contract's maximum amount is \$100,000 or more, each tier shall certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures shall be forwarded from tier to tier up to the Authority.

SUPPLEMENTAL CLAUSE 7. HUD REPORTING REQUIREMENTS

Contractor/Supplier/Vendor shall complete and submit all reports, in such form and according to such schedule, as may be required by NYCHA. The Contractor/Supplier/Vendor shall cooperate with all NYCHA efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 2 C.F.R. 200.328, 2 C.F.R. 200.343, and 24 C.F.R. 570.507, if applicable.

