



## *Fitchburg Housing Authority*

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## **Purchase Order Terms and Conditions**

The Fitchburg Housing Authority (FHA) is committed to conducting its business in an ethical, legal and socially responsible manner. The Fitchburg Housing Authority expects its contractors and vendors to share this commitment and, therefore, has established these purchase order terms and conditions.

### **A. Compliance with Laws, Regulations and Published Standards**

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

### **B. Environmental Practices**

Contractor/Vendor shall comply with all environmental laws and regulations applicable to their operations worldwide. Such compliance shall include, among other things, the following items:

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

### **C. Occupational Health and Safety Practices**

Contractor/Vendor shall provide their employees with a safe and healthy working environment in order to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of the Contractor/Vendor. Contractor/Vendors shall, among other things, provide:

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

***D. Labor Practices***

Contractor/Vendor shall adopt sound labor practices and treat their workers fairly in accordance with local laws and regulations. In addition, Contractor/Vendors must comply with the following standards:

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

***E. Ethical Business Practices***

Contractor/Vendor shall conduct their businesses in accordance with the highest standards of ethical behavior and in accordance with applicable laws and regulations. Contractor/Vendors are expected to conform to these requirements in each of the following areas:

- a) Fair Trade Practices - Contractor/Vendors shall not engage in collusive bidding, price fixing, price discrimination or other unfair trade practices in violation of antitrust laws.
- b) Bribery, Kickbacks and Fraud - No funds or assets of the Contractor/Vendor shall be paid, loaned or otherwise disbursed as bribes, "kickbacks", or other payments designed to influence or compromise the conduct of the Authority.

- c) Conflicts of Interest- Contractor/Vendors shall disclose to the Procurement Department any personal relationships with FHA employees. Any non-disclosure may result in disbarment and other legal ramifications.
- d) Fitchburg Housing Authority Policies and Procedures - Contractor/Vendors must comply with the Authority's published policies and procedures, including, but not limited to, the Authority's conflict of interest and procurement policies.
- e) Intellectual Property Rights - Contractor/Vendors shall respect the intellectual property rights of others, especially the Authority, its affiliates and business partners. Contractor/Vendors shall take appropriate steps to safeguard and maintain confidential and proprietary information of the Fitchburg Housing Authority and shall use such information only for the purposes specified for use by the Authority. Contractor/Vendors shall observe and respect all Authority patents, trademarks and copyrights and comply with all requirements as to their use as established by the Fitchburg Housing Authority. Contractor/Vendors shall not transmit confidential or proprietary information of the Fitchburg Housing Authority via the internet unless such information is encrypted in accordance with minimum standards established by the Fitchburg Housing Authority.

The Contractor/Vendor agrees that if after the award of a purchase order, he or she discovers an organizational conflict of interest with respect to this purchase order, he or she shall make an immediate and full disclosure in writing to the FHA which shall include a description of the action which the Contractor/Vendor has taken or intends to take to eliminate or neutralize the conflict.

The FHA may, however, terminate the purchase order for the convenience of the Authority if it would be in the best interest of the FHA.

In the event that the Contractor/Vendor was aware of an organizational conflict of interest before the award of the purchase order, and intentionally did not disclose the conflict, the FHA may terminate the purchase order for default. The Contractor/Vendor shall require a disclosure or representation from Sub-Contractors/Vendors and consultants who may be in a position to influence the advice or assistance rendered to the FHA.

#### **F. Improper Performance and Disputes**

In addition to other remedies provided by law, FHA reserves the right to reject any goods or to revoke any previous acceptance and to cancel all or any part of the Purchase order if Contractor/Vendor fails to deliver all or any part of the goods or perform any of the work in accordance with the terms and conditions of this Purchase order. Acceptance of any part of the Purchase order shall not bind the FHA to accept any future shipments or work, nor deprive it of the right to return goods already accepted. At FHA's option, if FHA so elects in its sole discretion with regard to any particular dispute, any dispute arising in connection with this Purchase order shall be resolved by arbitration in Leominster, MA in accordance with the rules of the American Arbitration Association; and all disputes shall otherwise be resolved in and only in the appropriate courts in Massachusetts as the exclusive judicial forum. FHA AND SELLER WAIVE THEIR RIGHT TO A JURY

TRIAL WITH REGARD TO ANY DISPUTE ARISING IN CONNECTION WITH THIS PURCHASE ORDER.

**G. Warranty**

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

**H. Risk of Loss**

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

**I. Indemnity and Hold Harmless**

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

With regard to Contractor/Vendor's obligation to defend, the FHA shall have the right to select the legal counsel whom Contractor/Vendor shall provide to defend any Indemnified Party, subject to Contractor/Vendor's approval of the qualifications of such legal counsel and the reasonableness of counsel's hourly rates as compared to the rates of attorneys with similar experience and qualifications in the relevant area of legal expertise and in the jurisdiction where the claim will be adjudicated. If the FHA elects, in its sole discretion, to retain separate legal counsel, in addition to or in lieu of the counsel to be provided by Contractor/Vendor, then all costs and expenses incurred by the FHA for such

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

***J. Assignment/Subcontracting***

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

***K. Insurance (for all contracts with a labor component excluding supplies or materials)***

In connection with contracts requiring the Contractor/Vendor to conduct work on FHA property or use of a vehicle, the Contractor/Vendor, at its own cost and expense, shall obtain and maintain in force during the term of this Purchase order, the following insurance coverage:

- a) A policy of workers' compensation insurance, in amounts required by law, covering all officers and employees of Contractor/Vendor who are in any way engaged in or connected with the Purchase order, and employer's liability insurance in an amount of not less than Five Hundred Thousand Dollars (\$500,000). Contractor/Vendor shall require its agents, sub-Contractor/Vendors and subcontractor/Vendors, who are in any way engaged in or connected with the Purchase order to maintain the same insurance as required herein of Contractor/Vendor.
- b) A policy of commercial general liability insurance with broad form property damage endorsement, personal injury and products completed operations coverage, affording protection in an amount of not less than One Million Dollars (\$1,000,000) per incident and in the aggregate, with respect to personal injury, death, or damage to property.

- c) If this Purchase order contemplates professional services, a policy of professional liability insurance, including errors and omissions, affording protection of not less than five hundred thousand (\$500,000) per incident and One Million Dollars (\$1,000,000) in the aggregate.
- d) A policy of comprehensive automobile liability insurance covering the operation of all motor vehicles used by Contractor/Vendor or its agents in connection with this Purchase order, affording protection in an amount of not less than One Million Dollars (\$1,000,000) combined single limit with respect to personal injury, death, or damage to property.

All of these insurance policies shall be issued by insurance companies with an AM Best rating of "A" or higher and a financial strength rating of VII or higher, or equivalent ratings provided by a disinterested, generally recognized rating agency, which companies shall be licensed or permitted to conduct business in the Commonwealth of Massachusetts. The commercial general liability policy shall name The Fitchburg Housing Authority as an additional insured, and shall be written as primary coverage and not contributing with or in excess of any coverage that the FHA may carry. Contractor/Vendor must furnish to FHA a current certificate of insurance for each of the policies required above. Insurance coverage(s) provided under this Purchase order shall not limit or restrict in any way the liability of Contractor/Vendor arising under or in connection with this Purchase order. Such insurance shall not be canceled or terminated without ten (10) days prior written notice of any cancellation or termination.

**L. Construction and Public Works as defined by M.G.L. C. 149 and 30 39M (for all purchase orders containing a construction or public works component)**

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

Contractor/Vendor shall secure all materials and the site where Work is performed, and shall leave all areas broom clean (unless a more stringent cleanliness standard is set forth in documents that are incorporated in this Purchase order by reference) and in a safe

condition at the end of each work day and upon completion of the Work. In case of dispute, Owner may remove waste at Contractor/Vendor's expense.

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

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

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

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

**M. Permits, Fees, Licenses**

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

**N. Termination for Cause and for Convenience**

- a) The FHA may terminate this purchase order in whole, or from time to time in part, for the FHA's convenience or the failure of the Contractor/Vendor to fulfill the purchase order obligations (cause/default). The FHA shall terminate by delivering to the Contractor/Vendor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor/Vendor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the FHA all information, reports, papers, and other materials accumulated or generated in performing the purchase order, whether completed or in process.
- b) If the termination is for the convenience of the FHA, the FHA 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/Vendor to fulfill its obligations under the purchase order (cause/default), the FHA may (1) require the Contractor/Vendor to deliver to it, in the manner and to the extent directed by the FHA, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by purchase order or otherwise, and the Contractor/Vendor shall be liable for any additional cost incurred by the FHA; and (3) withhold any payments to the Contractor/Vendor, for the purpose of set-off or partial payment, as the case may be, of amounts owned by the FHA by the Contractor/Vendor. In the event of termination for cause/default, the FHA shall be liable to the Contractor/Vendor for reasonable costs incurred by the Contractor/Vendor before the effective date of the termination. Any dispute shall be decided by FHA's Chief Procurement Officer.

**O. Non-Collusive Affidavit**

The Contractor/Vendor certifies under penalties of perjury that any bids, proposals, or quotes in connection with this purchase order has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

**P. MA REAP Certification**

Pursuant to M.G.L. c.62(c) §49(a), the individual accepting this purchase order on behalf of the Contractor/Vendor, hereby certifies, under the penalties of perjury, that to the best of their knowledge and belief the Contractor/Vendor has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support

**Q. Payment Terms**

The payment terms of this purchase order shall be net 30 unless there are other terms previously agreed upon in writing and approved by the FHA Chief Procurement Officer.

**R. FHA Working Hours**

Any work in connection to this purchase order shall only occur during FHA regular working hours which is Monday-Friday 8:00-4:00. Any time other than FHA regular working hours shall be approved in writing by an agent of the FHA.

**S. Shipping/Delivery Instructions**

All deliveries or shipments require 24 hr. notice and 30 minute notice prior to actual delivery to contact listed in PO. Receiving hours are from 8 a.m. to 4 p.m. only. All deliveries require a signature; unattended deliveries are not acceptable. Shipper to deliver via box truck or small vehicle only and provide inside/lift gate service