**General Conditions for Non-Construction**

**U.S. Department of Housing and Urban**

**Contracts**

**Development**

Office of Public and Indian Housing

Section I – (With or without Maintenance Work)

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 1/31/2017)

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**Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:**

proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the

1) **Non-construction contracts** (*without* maintenance)

contract as changed.

**greater than $100,000 - use Section I**;

(e) No services for which an additional cost or fee will be

2) **Maintenance contracts** (including nonroutine

charged by the Contractor shall be furnished without the prior written consent of the HA.

maintenance as defined at 24 CFR 968.105) **greater than**

**$2,000 but not more than $100,000 - use Section II**; and

3) **Maintenance contracts** (including nonroutine

**3. Termination for Convenience and Default**

maintenance), **greater than $100,000 – use Sections I**

**and II**.

(a) The HA may terminate this contract in whole, or from time

to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing

**Section I - Clauses for All Non-Construction Contracts greater than $100,000**

**1. Definitions**

The following definitions are applicable to this contract:

(a) "Authority or Housing Authority (HA)" means the

Housing Authority.

this contract, whether completed or in process.

(b) "Contract" means the contract entered into between the

(b) If the termination is for the convenience of the HA, the HA

shall be liable only for payment for services rendered

Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change

before the effective date of the termination.

(c) If the termination is due to the failure of the Contractor to

Order, or other modification.

fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner

(c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work

and to the extent directed by the HA, any work as

required under the contract.

described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may

(d) "Day" means calendar days, unless otherwise stated.

(e) "HUD" means the Secretary of Housing and Urban

development, his delegates, successors, and assigns, and

the officers and employees of the United States

Department of Housing and Urban Development acting for and on behalf of the Secretary.

be, of amounts owed to the HA by the Contractor.

**2. Changes**

(d) If, after termination for failure to fulfill contract obligations

(a) The HA may at any time, by written order, and without

(default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall been titled to payment as described in paragraph (b) above.

notice to the sureties, if any, make changes within the general scope of this contract in the services to be

performed or supplies to be delivered.

(e) Any disputes with regard to this clause are expressly made

(b) If any such change causes an increase or decrease in the

subject to the terms of clause titled Disputes herein.

hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other

**4. Examination and Retention of Contractor's Records**

(a) The HA, HUD, or Comptroller General of the United States,

affected terms, and shall modify the contract accordingly.

or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(c) The Contractor must assert its right to an equitable

adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

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(b) The Contractor agrees to include in first-tier subcontracts

under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause,

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

excludes purchase orders not exceeding $10,000.

(c) The periods of access and examination in paragraphs (a)

and (b) above for records relating to:

1. appeals under the clause titled Disputes;
2. litigation or settlement of claims arising from the

**9. Assignment of Contract**

performance of this contract; or,

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

(iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

**5. Rights in Data (Ownership and Proprietary Interest)**

**10. Certificate and Release**

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

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

**6. Energy Efficiency**

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

**11. Organizational Conflicts of Interest**

(a) The Contractor warrants that to the best of its knowledge

**7. Disputes**

and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:

(a) All disputes arising under or relating to this contract, *except*

*for disputes arising under clauses contained in Section III, Labor Standards Provisions*, including any claims for damages for the alleged breach there of which are not disposed of by agreement, shall be resolved under this

(i) Award of the contract may result in an unfair

competitive advantage; or

(ii) The Contractor's objectivity in performing the contract

clause.

work may be impaired.

(b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest

(b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the

Contractor shall be subject to a written decision by the HA.

(c) The HA shall, with reasonable promptness, but in no event

in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision

shall be final and conclusive.

of the HA.

(d) Provided the Contractor has (i) given the notice within the

(c) In the event the Contractor was aware of an organizational

conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting

time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the

Officer, the HA may terminate the contract for default.

(d) The terms of this clause shall be included in all

subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

merits by a court of competent jurisdiction.

(e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

**12. Inspection and Acceptance**

(a) The HA has the right to review, require correction, if

necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

**8. Contract Termination; Debarment**

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product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local

product from the Contractor.

(b) The Contractor shall make any required corrections

promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a

government.

later date if extended by the HA.

"Officer or employee of an agency" includes the following

(c) Failure by the Contractor to proceed with reasonable

individuals who are employed by an agency:

promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

(i) An individual who is appointed to a position in the

Government under title 5, U.S.C., including a position

under a temporary appointment;

(ii) A member of the uniformed services as defined in

section 202, title 18, U.S.C.;

(iii) A special Government employee as defined in section

**13. Interest of Members of Congress**

202, title 18, U.S.C.; and,

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

(iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory

Committee Act, title 5, appendix 2.

“Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to

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

expenditures specifically permitted by other Federal law.

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other pubic official of such locality or localities who exercises any functions or responsibilities with respect to the

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to

expenditures specifically permitted by other Federal law.

project, shall, during his or her tenure, or for one year

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such

thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

**15. Limitation on Payments to Influence Certain Federal Transactions**

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal

executive departments and agencies as well as independent regulatory commissions and Government corporations, as

defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following

person for 130 working days.

Federal actions:

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

1. The awarding of any Federal contract;
2. The making of any Federal grant;

(iii) The making of any Federal loan;

(iv) The entering into of any cooperative agreement; and,

(v) The extension, continuation, renewal, amendment, or

(b) Prohibition.

modification of any Federal contract, grant, loan, or

(i) Section 1352 of title 31, U.S.C. provides in part that no

cooperative agreement.

appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure

or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives

are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

cooperative agreement, and the extension,

continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative

agreement.

(ii) The prohibition does not apply as follows:

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(1) Agency and legislative liaison by Own

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include

Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal

action.

(b) For purposes of paragraph (b)(i)(1)(a) of   
this clause, providing any information specifically   
requested by an agency or Congress is permitted

at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for

consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of

any covered Federal action:

clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service

technical discipline.

(c) Requirements imposed by or pursuant to law

capabilities; and,

as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an

agency's use.

documents.

(d) The following agency and legislative liaison activities are permitted where they are prior to

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this

formal solicitation of any covered Federal action:

section are permitted under this clause.

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about

(iii) Selling activities by independent sales

representatives.

(c) The prohibition on the use of appropriated funds, in

initiation of a covered Federal action;

subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its

official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other

to the merits of the matter:

(i) Discussing with an agency (including individual

demonstration) the qualities and characteristics of the person's products or services, conditions or terms of

subsequent amendments.

sale, and service capabilities; and

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are

(ii) Technical discussions and other activities regarding

the application or adaptation of the person's products

permitted under this clause.

or services for an agency's use.

(2) Professional and technical services.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any

(a) The prohibition on the use of appropriated

funds, in subparagraph (b)(i) of this clause,

does not apply in the case of-

payment prohibited by this clause.

(i) A payment of reasonable compensation

made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for

(e) Penalties. Any person who makes an expenditure

prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be

applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted

receiving that Federal action.

to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

(ii) Any reasonable payment to a person, other than an officer or employee of a

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**16. Equal Employment Opportunity**

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contract, the Contractor agrees

as follows:

(a) The Contractor shall not discriminate against any employee

or applicant for employment because of race, color,

religion, sex, or national origin.

**17. Dissemination or Disclosure of Information**

(b) The Contractor shall take affirmative action to ensure that

applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training,

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

**18. Contractor's Status**

including apprenticeship.

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

(c) The Contractor shall post in conspicuous places available

to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this

clause.

(d) The Contractor shall, in all solicitations or advertisements

for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex,

**19. Other Contractors**

or national origin.

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

(e) The Contractor shall send, to each labor union or

representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to

employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246,

**20. Liens**

as amended, and the rules, regulations, and orders of the

Secretary of Labor.

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

(g) The Contractor shall furnish all information and reports

required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such

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

(a) The work to be performed under this contract is subject to the

rules, regulations, and orders.

requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of

(h) In the event of a determination that the Contractor is not in

compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as

HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's

otherwise provided by law.

regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the

(i) The Contractor shall include the terms and conditions of

Part 135 regulations.

this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

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

begin.

(d) The contractor agrees to include this section 3 clause in every

subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in

violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions,

including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR

Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may   
result in sanctions, termination of this contract for default, and   
debarment or suspension from future HUD assisted contracts.

**22. Procurement of Recovered Materials**

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

recovered materials practicable unless the Contractor

determines that such items: (1) are not reasonably available in a

reasonable period of time; (2) fail to meet reasonable

performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at

an unreasonable price.

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

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