



Purchase Order Terms and Conditions April 2014

Background

The following terms and conditions and any specifications, drawings, and additional terms and conditions which may be incorporated by reference or appended, are a part of the purchase order. By accepting the order, commencing work, or accepting payment or any part thereof, the Contractor agrees to and accepts all terms and conditions.

The goods provided under this purchase order must in all respects comply with the description on the purchase order and with the warranties of title, merchantability, and fitness as defined in the Uniform Commercial Code.

RFMH has the right to inspect all goods before accepting them or paying for them. Goods are not considered to be accepted until RFMH has had an opportunity to make a thorough inspection of the goods when they arrive at the destination. If this order involves personal services, the services must be rendered in a good and workmanlike manner in conformity with all applicable laws, rules, ordinances, and regulations, and, if applicable, the Contractor has or will obtain all legally necessary licenses or permits to perform such work.

This transaction must be consistent with New York State law. To the extent provided by law, Contractor will indemnify the RFMH for any claim made against the RFMH arising out of the goods or services provided by the Contractor.

Contractor shall at all times indemnify, defend and hold harmless the RFMH, its officers, directors, employees, consultants, agents and representatives against all claims, causes of action, infringements, proceedings, demands, damages, losses, expenses, and liabilities of any kind whatsoever, including without limitation, legal expenses and attorneys' fees, arising out of or resulting from the goods and/or services provided hereunder, including without limitation the death of or injury to any person or persons, or out of any damage to property resulting from the goods or services provided hereunder. Contractor shall obtain and carry in full force and effect commercial comprehensive general liability insurance which shall protect the RFMH and Contractor with respect to events covered in this paragraph.

Pursuant to Circular A-110, article __.48, Contract Provisions, the following conditions will apply to this order.

(a) In the event of a violation or breach of these terms and conditions by Contractor, the RFMH shall have the right to pursue any available remedy at law or equity including but not limited to withholding any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages may be determined; suspending the agreement/order is established; or terminating the agreement/order.

(b) The RFMH may terminate this purchase order agreement: 1) upon thirty (30) days notice for any reason; or 2) if the RFMH has reason to believe that the Contractor is in breach of its obligations hereunder. Such termination shall be effective immediately upon receipt of official written notification from the RFMH.

(c) "Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.

(3) A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety companies Doing Business with the United States."

(d) When the value of the order is in excess of the small purchase threshold, the Contractor agrees that the RFMH, the Federal sponsoring agency or any of their duly authorized representatives shall have access to any of its books, documents, papers, and records which are directly related to this transaction for the purpose of making audits, examinations, excerpts, and transcriptions.

Equal Opportunity and Affirmative Action Provisions

Contractor and subcontractor will abide by the requirements set forth in Executive Orders 11246 and 11375, and shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 60-4.3(a)(construction). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

Certification Regarding Debarment or Suspension

(1) CONTRACTOR certifies that, to the best of its knowledge and belief, that CONTRACTOR

and/or any of its Principals, are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by a Federal agency.

(2) CONTRACTOR shall provide immediate written notice to the RFMH if it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The Purchase Order, including these terms and conditions, and any Blanket Release, if applicable, are intended to constitute a legal agreement and are legally binding upon all parties. The Blanket Purchase Projection is for estimate/projection use only, and is not intended to constitute any legal agreement or create any legal obligations.

E-Verify: Employment Eligibility Verification Optional Clause

If this purchase order is let under an Employment Eligibility Verification award, then this Agreement is subject to the requirements of Employment Eligibility Verification as articulated under [FAR clause 52.222-54](#), commonly referred to as E-Verify, which requires the contractor to enroll in the E-Verify program and verify the work authorization of its employees.

Pursuant to the requirements, the contractor will enroll in the program by attesting to and submitting the required E-Verify Memorandum of Understanding (MOU) within thirty (30) days of Agreement execution. Contractor must submit evidence of enrollment to the RFMH before any payments will be made. Failure to comply with this requirement will be considered a breach of this Agreement and will invoke a suspension or termination of this Agreement by the RFMH.

An Independent Contractor is not required to enroll in E-Verify if he/she is a sole proprietor with no employees, or is otherwise not required to comply with I-9 provisions. Nonetheless, if at any time Independent Contractor hires employees it must notify the RFMH of the same and comply with this clause accordingly.

Notification of Employee Rights Under Federal Labor Laws

If the value of this PO is more than \$10,000 and is funded from a prime federal contract over \$100,000 it is incumbent upon the vendor/subcontractor to comply with [29 CFR Part 471, Appendix A](#) to subpart A and flow-down the same to any sub-tier entity meeting the prescribed eligibility/threshold requirements.

Exhibit 1

Exhibit 1 (attached) is a table of the U.S. federal government laws and implementing regulations, including A-110, Appendix A, that are applicable to the RFMH contracts, agreements and purchase order terms and conditions. Exhibit 1 is not all inclusive of all applicable federal and state laws and regulations, and is subject to change as laws and regulations change. The Contractor must assure compliance with the requirements of Exhibit 1, as applicable, to the work performed or for the goods and services provided under the purchase order.

Contractor understands and agrees that they are subject to the terms and conditions outlined in this document. Contractor acknowledges, by its acceptance of this order, commencement of work hereunder, or acceptance of payment hereunder, that it has reviewed said terms and conditions and accepts the same as a condition of this order.

EXHIBIT 1

<p>Regulatory Framework Office of Management and Budget (OMB) Circular No. A-110 <i>2 CFR 215</i> <i>Section .40-.48</i> <i>Revised 69 FR 25970, May 10, 2004</i></p>	<p>Privacy Health Insurance Portability and Accountability Act of 1996 (HIPAA) <i>45 CFR 160-164</i></p>	<p>Data & Dissemination Export Administration Act of 1979 <i>50 USC app. 2401-2420, as amended</i> Export Administration Regulations (EAR) <i>15 CFR 730-774</i> Arms Export Control Act <i>22 USC 2778</i> International Traffic in Arms Regulations (ITAR) <i>22 CFR 120-130</i> Antiterrorism and Effective Death Penalty Act of 1995 (Commonly known as Anti-Terrorism Act) <i>18 USC 2332d, Section 321</i> Terrorism Sanctions Regulations Office of Foreign Assets Control (OFAC) <i>31 CFR 595</i></p>
<p>Patent and Trademark Amendment of 1980 (Commonly known as Bayh-Dole Act) <i>35 USC Chapter 18</i> <i>37 CFR 401</i></p>	<p>Fraud, Waste, & Abuse Debarment and Suspension <i>Executive Orders 12549 and 12689</i></p>	<p>Arms Export Control Act <i>22 USC 2778</i> International Traffic in Arms Regulations (ITAR) <i>22 CFR 120-130</i></p>
<p>A21 Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, <i>Revised 69 FR 25970, May 10, 2004</i></p>	<p>Procurement Integrity <i>41 USC 423, as amended</i></p>	<p>Antiterrorism and Effective Death Penalty Act of 1995 (Commonly known as Anti-Terrorism Act) <i>18 USC 2332d, Section 321</i></p>
<p>A133 Audits of States, Local Governments, and Non-Profit Organizations, <i>Revised 69 FR 25970, June 27, 2003</i></p>	<p>Covenant Against Contingent Fees <i>10 USC 2306(b), as amended</i> <i>41 USC 254(a), as amended</i></p>	<p>Terrorism Sanctions Regulations Office of Foreign Assets Control (OFAC) <i>31 CFR 595</i></p>
<p>Antidiscrimination Civil Rights Act of 1964 <i>42 USC 2000d-d-7</i> <i>42 USC 3601, as amended</i> Americans with Disabilities Act <i>47 USC 225, as amended</i></p>	<p>Protection of Living Things Animal Welfare Act <i>7 USC 2131 et seq.</i> <i>9 CFR Subchapter A</i></p>	<p>Employee Requirements Occupational Safety and Health Act of 1970 <i>42 USC 3142</i> Davis-Bacon Act <i>40 USC 276a-1 to 267a-7, as amended</i></p>
<p>Equal Employment Opportunity <i>Executive Order 11246 and 11375, as amended</i></p>	<p>Public Health Service Act (For Human Research Protections) <i>45 CFR 46.101-.409</i> <i>NIH Guide, Notice OD-00-039</i></p>	<p>Contract Work Hours and Safety Standards Act <i>40 USC 3701-3708</i></p>
<p>Vietnam Era Veterans Readjustment Assistance Act of 1972 <i>38 USC 4212, as amended</i> <i>41 CFR 60-250</i></p>	<p>Research Involving Recombinant DNA Molecules <i>43 FR 60108, 12/11/78</i></p>	<p>Byrd Amendment Concerning Lobbying <i>31 USC 1352</i></p>
<p>Small Business Act of 1958 <i>15 USC 6311-657, as amended</i> <i>13 CFR 125.4</i></p>	<p>Environmental Protection Clean Air Act <i>42 USC 7401-7661, as amended</i> <i>5 CFR 1</i></p>	<p>Family and Medical Leave Act of 1993 (FMLA) <i>29 USC 2654</i></p>
<p>Specific Administrative Requirements Buy American Act <i>41 USC 10a, 106, as amended</i> International Air Transportation Fair Competitive Practices Act of 1974 (Commonly known as Fly America Act) <i>49 USC 40118, as amended</i></p>	<p>Federal Water Pollution Control Amendments of 1972 (Commonly known as Clean Water Act) <i>33 USC 1251-1376</i> <i>40 CFR Subchapter D</i></p>	<p>Fair Labor Standards Act of 1938 (FLSA) <i>29 USC 201, et seq.</i> Copeland (Anti-Kickback) Act <i>40 USC 3145</i> <i>29 CFR 3</i></p>
		<p>Safety & Security Select Agents <i>DHHS & CDC – 42 CFR 73</i> <i>USDA & APHIS – 9 CFR 121</i></p>