



Oakland Housing  
Authority

May 15, 2017

Gentlemen/Ladies:

**SUBJECT: Request for Proposal (RFP) NO. 17-012 Legal Consulting Services for Real Estate Development Department**

The Oakland Housing Authority invites proposals for legal services to be performed under a contract with OHA by a firm or firms with experience in advising housing authorities on the development of complex, sustainable/green, urban infill, mixed-income, affordable, mixed-financed, possibly mixed-use, rental and/or homeownership development projects.

**Proposals will be accepted on the first floor at 1801 Harrison Street, Oakland, CA. until 10:00 AM (local time), July 12, 2017.** Offers received after this date and time will be rejected without consideration.

Questions of a procedural nature may be directed to Courtney Creswell at (510) 587-2165.

We look forward to receiving your proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Johnson', with a long horizontal line extending to the right.

Eric Johnson  
Executive Director  
Oakland Housing Authority  
1619 Harrison Street, Oakland, CA 94612



Oakland Housing  
Authority

## **REQUEST FOR PROPOSALS (RFP) #17-012**

### **LEGAL SERVICES**

**for the Real Estate Development Department**

**General Advice, Tax Credit Syndication, Bond Counsel**

<b>RFP Issued</b>	May 15, 2017
<b>Pre-proposal Conference (Non Mandatory)</b>	May 31, 2017 @ 10:00 AM PST 1801 Harrison Street – Floor 1 Oakland, CA 94612
<b>Questions Due</b>	June 15, 2017 by 10:00 AM PST
<b>Addendum Issued (if applicable)</b>	June 26, 2017 by 5:00 PM PST
<b>Proposal Due</b>	July 12, 2017 @ 10:00 AM PST 1801 Harrison Street – Floor 1 Oakland, CA 94612

**Contract Compliance & General Services (CCGS) Department  
Oakland Housing Authority (OHA)  
1801 Harrison Street, Floor 1, Oakland, CA 94612  
e-mail: [ccgs@oakha.org](mailto:ccgs@oakha.org)**

**Contact person for the above RFP:  
Courtney Creswell: 510-587-2165**

# REQUEST FOR PROPOSALS (RFP) # 17-012

## LEGAL SERVICES FOR THE REAL ESTATE DEPARTMENT: General Advice, Tax Credit Syndication, and Bond Counsel

---

### TABLE OF CONTENTS

<b>1. General Information</b>	<b>3</b>
1.1 RFP Introduction	3
1.2 OHA Reservation of Rights	4
1.3 OHA Background and Information	4
<b>2. Scope of Services</b>	<b>5</b>
2.1 Description of Services	5
2.2 Sub-Contractors	7
<b>3. Minimum Qualifications</b>	<b>7</b>
<b>4. Proposal Submission Requirements</b>	<b>8</b>
4.1 Proposal Format	9
A. Letter of Interest	9
B. Demonstrated Experience & Past Performance	10
C. Quality of Service	12
D. Approach to Project	13
E. Fee and Billing Information	13
4.2 Required Forms/Certifications	13
A. Cost Form	13
B. Profile and Certification Form	13
C. Section 3 Business Certification and Action Plan	14
D. Sub-Contractor Form	14
E. Form HUD-5369-C	14
F. Addendum Acknowledgement Form (if applicable)	14
<b>5. Process for Selecting Consultant</b>	<b>14</b>
5.1 RFP Timeline	14
5.2 Pre-Proposal Conference	14
5.3 Questions/Answers	14
5.4 Proposal Due Date	15
5.5 Evaluation Criteria	16
5.6 Selection Process	17
<b>6. Contract Requirements</b>	<b>19</b>
6.1 Consultant Requirements	19
6.2 Insurance Requirements	19
6.3 Contract Award	19
6.4 Contract Conditions	20
6.5 Contract Terms	21
6.6 Contractor's Breach	21
6.7 Remedies in Case of Breach	21

Documents (in the order of the RFP package)		
	PROPOSAL SUBMISSION REQUIREMENTS	MUST be submitted with Proposal.
	<p><b>1. Proposal Format</b></p> <ul style="list-style-type: none"> <li>A. Letter of Interest</li> <li>B. Demonstrated Experience &amp; Past Performance</li> <li>C. Quality of Service</li> <li>D. Approach to the Project</li> <li>E. Fees and Billing Information</li> </ul> <p><b>2. Required Forms/Certifications</b></p> <ul style="list-style-type: none"> <li>A. Cost Form</li> <li>B. Profile and Certification Form</li> <li>C. Section 3 Business Certification and Action Plan</li> <li>D. Sub-Contractor Form</li> <li>E. Form HUD-5369-C</li> <li>F. Addendum Acknowledgement</li> </ul>	√
Exhibit	ATTACHMENTS – EXHIBITS/ FORMS/ DOCUMENTS	
A	Cost Form	√
B	Profile and Certification Form	√
C	Section 3 Requirements – Oakland Housing Authority Economic Opportunities Policy	
D	Contractor's Summary Guide to Section 3 Compliance	
E	Section 3 Certification and Action Plan	√
F	Sub-Contractor Form <i>(if applicable)</i>	√
G	<b>HUD-5369 B</b> , Instructions To Offerors-Non-Construction	
H	<b>HUD-5369 C</b> , Certifications and Representations of Offerors -Non-Construction	√
I	<b>HUD-5370 C</b> , General Conditions for Non-Construction Contracts – Section 1	
J	OHA Insurance Requirements	
K	Sample Consultant Agreement	
L	Vendor Protests and Claims Procedures	

## 1. GENERAL INFORMATION

### 1.1 RFP Introduction

The Oakland Housing Authority (the "Authority" and "OHA") invites qualified and interested firms to submit responses to this Request for Proposals ("RFP"). The selected firm(s) will provide legal services to support OHA's real estate development activities. The OHA is seeking legal services in the following three areas: 1) as-needed legal advice for the Office of Real Estate Development (ORED); 2) project-specific tax credit syndication representation; and 3) project-specific bond counsel.

The proposing firm may elect to propose to provide legal services in any or all of the three areas referenced above. OHA may select one or more firms to provide legal services in each area. If OHA establishes a list of firms, it may select different firms for different projects at its sole discretion.

OHA intends to enter into a two-year agreement with the selected law firm or firms (with up to three one year options to extend).

In keeping with its mandate to provide efficient and effective services, OHA is soliciting proposals from qualified, licensed and insured firms to provide services as described under the **Scope of Work** within this RFP. All proposals submitted in response to this solicitation must conform to all of the requirements and specifications outlined within this document and any designated attachments in its entirety.

For further information and/or updates on this bid or any other OHA projects, you may go to the OHA website at [www.oakha.org/ Business Opportunities/ Open RFPs and Bid Status/ Active Bids/](http://www.oakha.org/Business%20Opportunities/Active%20Bids/) select appropriate bid #.

### 1.2 OHA Reservation of Rights

- A. OHA reserves the right to reject any or all proposals, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by OHA to be in its best interests.
- B. OHA reserves the right not to award a contract pursuant to this RFP.
- C. OHA reserves the right to terminate a contract awarded pursuant to this RFP, at any time for its convenience.
- D. OHA reserves the right to determine the days, hours and locations that the successful proposer(s) shall provide the services called for in this RFP.

- E. OHA reserves the right to negotiate the fees proposed by the proposer entity.
- F. OHA reserves the right to reject and not consider any proposal that does not meet the requirements of this RFP, including but not necessarily limited to incomplete proposals and/or proposals offering alternate or non-requested services.
- G. OHA is subject to the disclosure requirements of the California Public Records Act. This act will apply to all submitted proposals to OHA.
- H. OHA shall have no obligation to compensate any Proposer for any costs incurred in responding to this RFP.
- I. The Authority shall reserve the right, at any time during the RFP or contract process, to prohibit any further participation by a Proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein.
- J. No conversation with any officer, employee, agent or consultant of OHA, either before, during, or after the execution of an operating agreement affects or modifies any terms or obligations contained in the agreement documents, nor entities a successful Proposer to any adjustment or changes.

### **1.3 OHA Background and Information**

The Oakland Housing Authority was established on April 28, 1938 to provide low-income residents of the City of Oakland with access to low-cost housing. Currently, the Authority provides Public Housing units at multiple sites within the city limits for large developments, mixed-finance partnerships, and scattered sites.

The Authority has created a number of non-profit affordable housing affiliates to develop and operate affordable housing. The Authority is engaged in affordable housing development with a number of active sites in development. Development activities are carried out directly, and through a variety of affiliates and partnerships.

OHA is federally funded and regulated primarily under the U.S. Housing Act of 1937 as amended. The majority of our funding is governed by HUD regulations. The Authority was selected to be a "Moving to Work" housing authority by the US Department of Housing and Urban Development and enter into an MTW agreement in 2004. The agreement has since been amended extending the MTW agreement to 2028.

The Authority is governed by a seven-member Board of Commissioners appointed by the Mayor of the City of Oakland, with the approval of the Oakland City Council. The Executive Director, who reports to the Board of Commissioners, has a budgeted staff of approximately 371 full time employees in four major divisions: The Office of the Executive Director, including the Departments of Human Resources and Police Services, Real Estate Development, Finance, and Operations which includes the Housing Choice Voucher (Section 8), public housing, and resident services programs.

The Authority's employees are housed at seven separate facilities, all located within the City of Oakland: 1619 Harrison Street, 1805 Harrison Street, 1801 Harrison Street, 1180 25<sup>th</sup> Avenue, 935 Union Street, 1540 Webster Street, and 1327 65th Avenue.

## 2. **SCOPE OF SERVICES**

OHA will establish contract(s) from this Request for Proposal.

The OHA is seeking proposals from qualified, licensed and insured entities to provide legal services in the following areas: 1) as-needed legal advice for ORED; 2) project-specific tax credit syndication representation; and 3) project-specific bond counsel.

### 2.1 **Description of Services**

The selected firm(s) will provide the following services, **if applicable, and as needed.**

The scope of services may be modified and/or changed by the OHA as appropriate and pursuant to a change order.

The successful law firm(s) will be responsible for providing as-needed comprehensive legal advice, opinion and interpretation including, but not limited to, the following:

#### **As-needed legal advice for ORED on:**

- A. Deal structuring;
- B. Relocation;
- C. Acquisition and entitlement of sites;
- D. Architect and general contractor agreements;
- E. Compliance with HUD regulations and requirements;
- F. Mixed Finance transactions;
- G. Homeownership transactions;
- H. Property tax exemption eligibility and maintenance;
- I. NEPA and CEQA;
- J. Formation of nonprofit corporations and/or limited liability companies;

- K. Land use issues such as tentative maps, lot line adjustments, title;
- L. Year 15 transitions; and
- M. Real estate development matters that are not currently anticipated.

**Project-specific Tax Credit Syndication Representation:**

- A. Form limited partnership;
- B. Review investor letters of intent and financial projections;
- C. Advise on structuring syndications and project financing;
- D. Review loan documents for consistency with requirements for valid debt and maximizing basis in partnership interests, as well as, other tax credit requirements;
- E. Advice regarding structuring the transaction to ensure that the partnership will be taxed as a partnership for tax purposes;
- F. Act as liaison to California Tax Credit Allocation Committee (TCAC) with regard to legal, financing, and logistical tax credit allocation matters;
- G. Review, analyze, and negotiate solutions to business, tax, financial and logistical issues raised by syndication documents, including amended and restated limited partnership agreements, subscription documents, development agreements, guarantees and options and rights of first refusal to acquire projects by OHA;
- H. Coordinate closing of syndications;
- I. Issue legal counsel opinions required by TCAC or investors (including up to two updates each, if required);
- J. Advise, structure, and monitor compliance with the 50% test for tax exempt bond transactions;
- K. Prepare any required federal securities filings;
- L. Provide tax opinions; and
- M. Advise on recapitalization and refinancing.

The OHA is seeking a fixed fee, per project, to provide tax credit syndication representation. Additional services or services rendered for syndications that do not close for any reason, shall be billed at hourly rates.

**Bond Counsel:**

- A. Draft all bond documents;
- B. Work closely with tax credit counsel regarding the investor documents, and review investor documents for consistency with requirements of tax-exempt bond issuance and bond documents;
- C. Provide tax opinion to the lender and other typical bond counsel opinions with tax credit counsel;
- D. Coordinate closings with funding sources, title company, insurance agency, contractor, architect, and other parties to assure accomplishment in a timely manner to meet the requirements of bond issuance, IRS, CDLAC, CTAC, the OHA, and the funders;



- E. Advise on selection of other members of underwriting team, including without limitation underwriters and trustees;
- F. Assist with presentation of financing proposals, including drafting sections of presentation document concerning legal matters;
- G. Assist in executing timely bond issuance;
- H. Provide a complete bond transcript in electronic format at the conclusion of the financing;
- I. Prepare in a timely manner all applicable "Authorizing Resolutions" for consideration and adoption to authorize the financing team to go forward with the implementation of a particular proposed bond transaction;
- J. Advise on compliance with the Tax Equity and Fiscal Responsibility Act (TEFRA) rules; and
- K. Prepare final resolutions for consideration and adaption by the Board of Commissioners and authorize the execution of the bond purchase agreement relating to each series of bonds to be issued.

The OHA is seeking a fixed fee, per project, for Bond Counsel. Additional services or services rendered for deals that do not close for any reason, shall be billed at hourly rates.

Firms may elect to propose to provide legal services in any or all of the three areas referenced above.

The OHA reserves the right to select multiple law firms, including selecting different legal firms for each area, or to select a firm(s) with expertise in one or more functional legal area. The OHA also reserves the right to audit the financial records of the legal firm selected for services rendered on behalf of the OHA.

## 2.2. **Sub-Contractors**

Firms must identify any third party it intends to use as a subcontractor when performing this contract and/or if the proposal is a joint venture with another firm.

The OHA reserves the right to audit the financial records of the consultant and its sub-consultants. (Please submit the **Sub-Contractor Form** in the attached forms if applicable).

## 3. **MINIMUM QUALIFICATIONS**

The following are the minimum qualifications required for an attorney/law firm to be considered as a potential provider of services to the Authority:

1. The attorney(s) providing legal services to the Authority must be licensed to practice law in the State of California and be a member, in good standing, of the California State Bar for a minimum of 5 years.

2. The attorney/law firm must have substantial knowledge and experience in the interpretation of both federal and state laws as they relate to urban infill, mixed-income, mixed-finance, mixed-use, rental and/or homeownership development projects in California. Prior experience representing public housing authorities or similar public agencies in the above areas is required.
3. The attorney/law firm must have a minimum of five (5) years' experience in the type of work described in this Request for Proposal (RFP) including experience with HUD Programs and experience in California.
4. Proposing law firms shall identify a primary attorney and identify a primary back-up attorney. If applicable, the firm shall identify other primary attorneys in specialized areas of the law as well.
5. Pursuant to the State Bar Act, California Business and Professions Code Section 6000 et seq. and the California State Bar Rules of Professional Conduct, the attorney/law firm must disclose any conflicts of interest which would prevent it from representing the Authority, or which might prevent it from representing the Authority without the Authority's informed written consent.
6. OHA's services are largely funded by U.S. Department of Housing and Urban Development (HUD) funds and therefore any documents generated by the attorney/law firm selected must comply with all applicable HUD regulations, including, but not limited to those specified in HUD 5370 – C, General Conditions for Non-Construction Contracts. The attorney must also comply with all OHA requirements.
7. The law firm must have the technical infrastructure to communicate with OHA, including internet capabilities and Microsoft applications.

#### **4. PROPOSAL SUBMISSION REQUIREMENTS**

OHA intends to retain the successful proposer(s) pursuant to a "Best Value" basis, not a "Low Proposal" basis ("Best Value," in that the OHA will consider factors other than just cost in making the award decision).

To properly evaluate each offer received by OHA, all proposals submitted in response to this RFP must be formatted in accordance with the "Proposal Format" described in the section below. None of the proposed services may conflict with any requirement the Authority has published herein or has issued by addendum.

Proposer(s) selected must be fully qualified to perform the services described above and must possess the appropriate business license. In addition, as the work is funded with U.S. Department of Housing and Urban Development (HUD) funds, any required documents, where applicable, developed by the proposer(s) and / or the OHA must comply with all applicable HUD regulations specified in HUD-5370-C General Conditions for Non-Construction Contracts. The Consultant's firm must also comply with all OHA contract requirements.

#### **4.1 Proposal Format**

To provide objective criteria that can be used in determining a proposer's qualifications and abilities, please address the list of items below, in order of request, beginning with the "Letter of Interest".

Exhibits such as resumes or any other documents of a related nature, developed by the proposer may be attached. Proposers may also include other general information that the proposer believes is appropriate to assist the OHA in its evaluation.

The Authority will not provide any reimbursement for the cost of developing, presenting or providing any response to this RFP.

##### **A. Letter of Interest**

1. Provide a letter of interest on the firm's letterhead. This letter must include the location of the firm's primary office. The letter must also include the firm's approach to the scope of services. Provide a narrative that gives a brief description of the firm, including the firm's principal areas of practice, number of employees, location of the main office and the principal office from which services will be offered. The letter should also indicate if the firm is proposing to do all aspects of work in this RFP, or whether the firm is proposing only portions of the work, such as the role of counsel for equity syndication, or bond counsel.

Provide a brief history of the business, including size, area of expertise, number of years engaged in business under the company's present name, relevant license number(s) and/or certifications, and other relevant information.

Section one of this letter should also include the name and contact information (address, phone and fax numbers, and email address) of the proposal contact and the proposed staff member(s) for this assignment, branch office location(s) and contact information.

2. Describe how your firm will meet the minimum qualifications listed in the “*Minimum Qualifications*” section of this RFP.

**B. Demonstrated Experience & Past Performance**

Proposers should describe how their experience matches the areas of legal services listed below.

Resumes of proposed attorney’s and staff dedicated to perform legal services for the Authority must be included in this section.

**As-needed legal advice for ORED on:**

- A. Deal structuring;
- B. Relocation;
- C. Acquisition and entitlement of sites;
- D. Architect and general contractor agreements;
- E. Compliance with HUD regulations and requirements;
- F. Mixed Finance transactions;
- G. Homeownership transactions;
- H. Property tax exemption eligibility and maintenance;
- I. NEPA and CEQA;
- J. Formation of nonprofit corporations and/or limited liability companies;
- K. Land use issues such as tentative maps, lot line adjustments, title;
- L. Year 15 transitions; and
- M. Matters that are not currently anticipated.

**Project-specific Tax Credit Syndication Representation:**

- A. Form limited partnership;
- B. Review investor letters of intent and financial projections;
- C. Advise on structuring syndications and project financing;
- D. Review loan documents for consistency with requirements for valid debt and maximizing basis in partnership interests, as well as, other tax credit requirements;
- E. Advice regarding structuring the transaction to ensure that the partnership will be taxed as a partnership for tax purposes;
- F. Act as liaison to California Tax Credit Allocation Committee (TCAC) with regard to legal, financing, and logistical tax credit allocation matters;
- G. Review, analyze, and negotiate solutions to business, tax, financial and logistical issues raised by syndication documents, including amended and restated limited partnership agreements, subscription documents,

- development agreements, guarantees and options and rights of first refusal to acquire projects by OHA;
- H. Coordinate closing of syndications;
  - I. Issue legal counsel opinions required by TCAC or investors (including up to two updates each, if required);
  - J. Advise, structure and monitor compliance with the 50% test for tax exempt bond transactions;
  - K. Prepare any required federal securities filings;
  - L. Provide tax opinions; and
  - M. Advise on recapitalization and refinancing.

**Bond Counsel:**

- A. Draft all bond documents;
- B. Work closely with tax credit counsel regarding the investor documents, and review investor documents for consistency with requirements of tax-exempt bond issuance and bond documents;
- C. Provide tax opinion to the lender and other typical bond counsel opinions with tax credit counsel;
- D. Coordinate closings with funding sources, title company, insurance agency, contractor, architect, and other parties to assure accomplishment in a timely manner to meet the requirements of bond issuance, IRS, CDLAC, CTAC, the OHA, and the funders;
- E. Advise on selection of other members of underwriting team, including without limitation underwriters and trustees;
- F. Assist with presentation of financing proposals, including drafting sections of presentation document concerning legal matters;
- G. Assist in executing timely bond issuance;
- H. Provide a complete bond transcript in electronic format at the conclusion of the financing;
- I. Prepare in a timely manner all applicable "Authorizing Resolutions" for consideration and adoption to authorize the financing team to go forward with the implementation of a particular proposed bond transaction;
- J. Advise on compliance with the Tax Equity and Fiscal Responsibility Act (TEFRA) rules; and
- K. Prepare final resolutions for consideration and adaption by the Board of Commissioners and authorize the execution of the bond purchase agreement relating to each series of bonds to be issued.

**C. Quality of Service**

In this section you should provide a response that you feel best represents the quality of your firm's work, staff and responsiveness to your client's needs. This can also include specific cases, actions and resulting outcomes achieved for your clients. You are also encouraged to include the following:

1. Principal staff that would be assigned the contract. Please list the name of staff, position, designation as "Principal", "Associate", or "Staff", identify the "Primary" and "Primary Back-up" (secondary) attorneys, and the percentage of time (or number of hours) your firm proposes and plans for each staff person to work on this project.
2. References

Proposers must include up to three business references for work performed within the last three years.

**Please provide the following information for each reference: the agencies/client's name, name of contact person, telephone number, email address, a brief description and scope of the service(s), and the dates the services/contract were provided.**

You may also provide a letter of reference that substantiates the information requested. If a letter of reference is not submitted with the proposal, OHA may contact the references and ask that they confirm the type of work performed and comment on the timeliness and quality of services provided.

**D. Approach to Project**

Provide a narrative description of the attorney/firm's approach to representation of the Authority. Include a description of the proposed organizational structure and staffing levels, and describe the firm's capacity to provide the desired services. Identify the responsibilities of the primary attorney as well as the duties of other staff that may be assigned to assist with the legal services. Describe and explain how services will be delivered.

**Note: A principal or partner level person is expected as the primary contact. Published hourly rates should be submitted.**

**E. Fees and Billing Information**

State the proposed compensation structure for the services described above, including hourly rates, project-specific fee (tax syndication and bond counsel), administrative fees, chargeable expenses and services, and method and frequency of billing. Fee and billing information must be provided in addition to the required “*Cost Form*”.

Proposed Fees: Please note that the proposed rates and fees submitted by each proposer are inclusive of all necessary costs, unless otherwise specified in the proposed rates and fee structure, to provide proposed services including, but not limited to: employee costs and benefits; clerical support; overhead; profit; supplies; materials; licensing; insurance; travel; transportation; etc. Fees must be provided for each Option Term in addition to the three-year Initial Term of the agreement.

Escalation: Pertaining to the ensuing contract, there shall be no additional escalation of the proposed unit costs allowed at any time during the awarded contract period(s), other than the fees provided in the proposal.

OHA will negotiate an agreed upon fee schedule or flat rate for a transaction with firm(s) awarded such contract(s). The proposal should clearly delineate the fee structure for each type of legal services covered in this RFP, such as bond counsel, syndication or transactional work related to closing tax credit or mixed finance projects.

**4.2 Required Forms/Certifications**

The below forms must be signed and completed and submitted with your proposal in the following order:

- A. Cost Form**
- B. Profile and Certification Form**
- C. Section 3 Business Certification and Action Plan**

The Section 3 Business Certification and Action Plan must be completed and signed.

OHA expects the selected firm to comply with the Section 3 policy. Refer to Attachment **“Section 3 Requirements - Oakland Housing Authority Economic Opportunities Policy”** in this RFP.

The firm(s) must describe proposed compliance with Section 3 of the Housing Act of 1968, as amended, regarding the provision of training and employment opportunities for low-income persons, with priority to residents of OHA public housing.

The OHA Project Manager and Contract Compliance staff will monitor the Contractor's compliance with Section 3 requirements.

**D. Sub-Contractor Form**

**E. Form HUD-5369-C**

**F. Addendum Acknowledgement Form (if applicable)**

All applicable addendum acknowledgement form(s) must be submitted with the proposal.

**5. PROCESS FOR SELECTING CONSULTANT**

**5.1 RFP Timeline**

The following are proposed dates relating to this consultant selection process:

May 15, 2017	RFP Issued
May 31, 2017	Non-Mandatory pre-proposal conference @ 9:00 AM PST – 1801 Harrison Street - Floor 1, Oakland, CA 94612
June 15, 2017	<b>Questions in writing via email, due by 10:00 AM PST</b>
June 26, 2017	Responses to questions and Addendum issued and posted on OHA website (if necessary) by 5:00 PM PST.
July 12, 2017	<b>Proposals due by 10:00 AM PST.</b> To be submitted to Contract Compliance and General Services (CCGS) at 1801 Harrison St. Floor 1, Oakland CA 94612. Proposals must be delivered by this deadline; postmarks will not be accepted.
TBA	Board of Commissioners to consider selected firm for approval.

**5.2 Pre-Proposal Conference**

The pre-proposal conference (non-mandatory) will be held at the Oakland Housing Authority Contract Compliance Office, 1801 Harrison Street, First Floor, Oakland, California, 94612 on **May 31, 2017 at 10:00 AM PST.**

**5.3 Questions/Answers**

All questions must be submitted in writing via email to [ccgs@oakha.org](mailto:ccgs@oakha.org) no later than **10:00 AM PST, June 15, 2017.** All questions will be answered in writing and an addendum issued and posted on the OHA website if applicable by **June 26, 2017.**



No questions will be responded to after the question and answer period has expired. OHA Website at [www.oakha.org/](http://www.oakha.org/) select Business Opportunities/Open RFP's and Bid Status/Active Bids.

### **Addenda**

CCGS will respond to all inquiries in writing, by addendum, and will release the information to all prospective proposers (i.e. firms or individuals that have obtained the RFP Documents). During the RFP solicitation process, CCGS will NOT conduct any *ex parte* conversations (substantive conversation—"substantive" meaning, any discussion or exchange between any OHA staff and a prospective proposer that does or may contain fundamental or relevant information regarding any portion of the RFP or solicitation process, when other prospective proposers are not present) that may give one prospective proposer an advantage over other prospective proposers. This will not bar prospective proposers from contacting CCGS, however, CCGS will limit communication with prospective proposers to information already contained in the solicitation documents.

CCGS will not provide verbal responses to any inquiries made by prospective proposers. Instead, CCGS staff will direct proposers to submit all questions in writing and will provide a copy of the question and response to all proposers through a written addendum.

### **5.4 Proposal Due Date**

Responses to this solicitation will be accepted in OHA's Contract Compliance and General Services (CCGS) Office until **10:00 AM PST July 12, 2017.**

Respondents must provide **one (1) original copy, clearly marked "ORIGINAL," and four (4) copies clearly marked "COPY"**, of the required submission. These must be submitted in envelopes or boxes marked **"RFP #17-012 Legal Services for Real Estate Development Department."** Late proposals will not be accepted; postmarks will not be considered in determining if a proposal is submitted on time. Proposals will be date and time stamped by CCGS staff and a receipt provided for the proposal.

Oakland Housing Authority  
Contract Compliance & General Services Office  
1801 Harrison Street, First Floor  
Oakland, CA 94612  
Phone: (510) 587-2166  
Fax: (510) 587-2124  
E-mail: [CCGS@oakha.org](mailto:CCGS@oakha.org)

**Submission Responsibilities**

It shall be the responsibility of each proposer to be aware of and to abide by all dates, times, conditions, requirements and specifications set forth within all applicable documents issued by the OHA, including the RFP document, the documents listed within the following Section 4.2, and any addenda and required attachments submitted by the proposer. By virtue of completing, signing and submitting the completed documents, the proposer is stating his/her agreement to comply with the all conditions and requirements set forth within those documents. Written notice from the proposer not authorized in writing by CCGS to exclude any of the OHA requirements contained within the documents may cause that proposer to not be considered for award.

**5.5 Evaluation Criteria**

Proposers must score within the competitive range, 70 points or higher, to be considered for award. The following criteria will be used to evaluate all proposals:

<b>No.</b>	<b>Criteria</b>	<b>Points</b>
1.	<p><b><u>Experience:</u></b> The attorney/firm, and particularly the key personnel assigned to the contract, demonstrates verifiable experience in the type of legal work solicited in the RFP, with an emphasis on legal work in California. In response to this criterion, proposals must include:</p> <ul style="list-style-type: none"><li>a. Resumes of the attorneys and paralegals, if any, who will provide services to the Authority, designating which of those attorneys will have primary responsibility to the Authority.</li><li>b. A narrative description of the Attorney/Firm's approach to representation of the Authority, including a description of the organizational structure and staffing levels.</li></ul>	40
2.	<p><b><u>Quality of Service:</u></b> The Attorney and firm must demonstrate an ability to provide the required professional services in a timely and satisfactory manner as evidenced by past performance in terms of client contact, responsiveness and turnaround time. In response to this criterion, the proposals must include:</p> <p>At least 3 professional references from clients for whom the Attorney/Firm has provided significant public entity consulting and/or representation. These references should be able to substantiate the timeliness and quality of service provided.</p>	30

3.	<p><b>Fees:</b> Attorney/Firm demonstrates that the proposed fee schedule and other miscellaneous chargeable expenses are reasonable according to industry standards and experience. In response to this criterion, the proposals must include “Exhibit A – Cost Form”.</p> <p>Fees will be weighted and based on the lowest price at 30 points using the formula:</p> $\text{Score} = \frac{\text{Lowest bidder's price}}{\text{Bidder's price}} \times 30 \text{ (points)}$ <p>Proposed fees for the same area of legal services will be compared and weighted. For example, if a firm proposes as bond counsel, the firm’s fee will be compared with the bond counsel fees of other firms.</p>	30
<b>Total:</b>		100

**5.6 Selection Process**

All responses will be reviewed for completeness and responsiveness. Proposals will be reviewed, and the most qualified proposers may be required to be interviewed by a selection committee that will complete a final evaluation. Proposals with a final total score of 70 points or more will be placed on a qualified list. The selection will be the sole responsibility of OHA. OHA reserves the right to reject any and all proposals, and shall select a service provider based on the most advantageous conditions for OHA.

**A. Initial Evaluation for Responsiveness**

Each proposal received will first be evaluated for responsiveness (e.g., meets the minimum of the published requirements). The OHA reserves the right to reject any proposals deemed by the OHA not minimally responsive and to waive any minor informalities they deem so (the OHA will notify such firms in writing of any such rejection).

**B. Evaluation Committee**

Internally, an evaluation packet will be prepared for each evaluator. The OHA anticipates that it will select a minimum of three people to serve on a committee to evaluate each of the responsive “hard copy” proposals submitted in response to this RFP. PLEASE NOTE: No proposer shall be informed at any time during or after the RFP process as to the identity of any evaluation committee member. If, by chance, a proposer does become aware of the identity of such person(s), he/she SHALL NOT make any attempt to contact or discuss with such person anything related to this RFP. As indicated in this document, the designated CCGS staff is the only person at the OHA that the proposers shall contact pertaining to this RFP. Failure to abide by this requirement may (and most likely will) cause such proposer(s) to be eliminated from consideration for award.

C. **Evaluation**

CCGS will evaluate and award points pertaining to the Proposed Cost; which shall be weighted and based on the lowest proposed price. The appointed evaluation committee, independent of CCGS, shall evaluate the responsive proposals submitted and award points pertaining to Evaluation Criteria other than costs. Proposals with a minimum of 70 points will be placed on the qualified list. Upon final completion of the proposal evaluation process, the evaluation committee will forward the completed evaluations to the CCGS Contracting Officer.

D. **Potential “Competitive Range” and “Best and Finals” Negotiations**

The OHA reserves the right to conduct “Best and Finals” Negotiations, which may include oral interviews with all firms deemed to be in the competitive range. Any firm deemed not to be in the competitive range shall be notified of such, in writing, by the OHA in as timely a manner as possible, but in no case will it be longer than 10 days after the beginning of such negotiations with the firms deemed to be in the competitive range.

1. **Determination of Top Ranked Proposer**

Typically all points, excluding those for cost, are awarded by the evaluation committee. The committee’s scores (points) will be combined with the objective points for cost, awarded by CCGS, to determine the final ranking. The final ranking is then typically forwarded by CCGS to the Executive Director for approval. If the evaluation was performed to the satisfaction of the Executive Director, the final ranking may be forwarded to the Housing Authority Board of Commissioners (BOC) at a scheduled meeting for approval. Contract negotiations may, at the OHA's option, be conducted prior to or after the BOC approval.

2. **Notice of Results of Evaluation**

Upon completion of the evaluation and internal approval processes (even if the contract has not yet been awarded or board approval is pending), all proposers will receive, by e-mail, a Notice of (tentative) Results of Evaluation.

3. **Restrictions**

All persons having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a proposer entity will be excluded from participation on the evaluation committee. Similarly, all persons having ownership interest in and/or contract with a proposer entity will be excluded from participation on the evaluation committee.

## **6. CONTRACT REQUIREMENTS**

### **6.1 Consultant Requirements**

The proposer(s) selected must be fully qualified to perform the services described above and must possess the appropriate business license. Additionally, because the work is funded by U.S. Department of Housing and Urban Development (HUD) funds, any required documents generated by the Consultant and/or OHA must comply with all applicable HUD regulations specified in HUD-5370-C, the "General Conditions for Non-Construction Contracts. The firm must also comply with all OHA contract requirements.

All work performed pursuant to this RFP must conform and comply with all applicable local, state and federal codes, statutes, laws and regulations.

### **6.2 Insurance Requirements**

Prior to award, the successful proposer(s) will be required to provide the proper license documents and insurance certificates. The selected attorney will be required to comply with OHA's insurance requirements attached hereto. See **OHA Insurance Requirements for Consultants** under "Attachments" section of the Table of Contents.

#### **Indemnification:**

The attorney/law firm must expressly agree to defend, hold harmless and indemnify OHA, its commissioners, officers, agents and employees, of and from any claims, loss, damage, injury, actions, causes of action and liability, including attorneys' fees arising out of or connected with the attorney's operations or performance under the resultant contract.

#### **Additional Insured Party:**

As a condition of the contract, Contractor(s) will be required to provide a valid certificate of insurance and to submit copies of the insurance certificates naming OHA as an additional insured party.

### **6.3 Contract Award**

#### **A. Negotiations**

Once proposals have been evaluated and ranked, OHA will use the contract negotiation process to obtain the most highly qualified Consultant(s) at a fair and mutually agreed-to price. The proposed contract will include tasks with a Scope of Services and a Fee-Schedule.

The Authority reserves the right to enter into discussions with the firm whose proposal is deemed most advantageous and in the Authority's best interest for the purpose of negotiations. The Authority reserves the right to enter into negotiations with the responsible and responsive firms within the competitive range without the need to repeat the formal solicitation process.

OHA reserves the right to award without discussions.

**B. Meetings**

Once the contract is awarded, the selected firm's designated attorney will meet with the OHA Executive Director and key staff to discuss the needs, methods, and timeline for services.

**C. Contract Award Procedure**

If a contract is awarded pursuant to this RFP, the following detailed procedures will be followed:

By completing, executing and submitting a proposal, the "proposer is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by OHA, including the contract clauses already attached in the **Sample Consultant Agreement** (See "Attachments" section of the Table of Contents).

Accordingly, the OHA has no responsibility to conduct, after the submittal deadline, any negotiations pertaining to the contract clauses already published.

**6.4 Contract Conditions**

The following provisions are considered mandatory conditions of any contract award made by the OHA pursuant to this RFP:

**A. Contract Form**

The OHA will not execute a contract on the successful proposer's form. Contracts will only be executed on the OHA form (please see **Sample Consultant Agreement**) and by submitting a proposal the successful proposer agrees to do so (please note that the Authority reserves the right to amend this form as the OHA deems necessary). However, the Authority will, during the RFP process and prior to the submittal deadline consider any contract clauses that the proposer wishes to include therein and submits in writing a request for the OHA to do so. Failure of the OHA to include such clauses does not give the successful proposer the right to refuse to execute the OHA's contract form. It is the responsibility of each prospective proposer to notify the OHA, in writing, prior to submitting a proposal, of any contract clause that he/she is not willing to include and abide by in the final executed

contract. The OHA will consider and respond to such written correspondence, and if the prospective proposer is not willing to abide by the OHA's response (decision), then that prospective proposer shall be deemed ineligible to submit a proposal. ***Please note: OHA has no legal right or ability to (and will not) at any time, negotiate any clauses contained within ANY of the HUD forms included as a part of this RFP.***

**B. Assignment of Personnel**

The OHA shall retain the right to demand and receive a change in personnel assigned to the work if OHA believes that such change is in the best interest of the OHA and the completion of the contracted work.

**C. Unauthorized Sub-Contracting Prohibited**

The successful proposer(s) shall not assign any right, nor delegate any duty for the work proposed pursuant to this RFP (including, but not limited to, selling or transferring the contract) without the prior written consent of the OHA Contracting Officer. Any purported assignment of interest or delegation of duty, without the prior written consent of the OHA Contracting Officer shall be void and may result in the cancellation of the contract with OHA, or may result in the full or partial forfeiture of funds paid to the successful proposer as a result of the proposed contract; either as determined by the Contracting Officer.

**6.5 Contract Terms**

OHA intends to enter into a two year contract with the selected firm(s), with the option to extend the contract for three, one year terms.

**6.6 Contractor's Breach**

Failure of the Contractor to provide services in accordance with the RFP and terms of the contract will constitute a breach of the agreement between OHA and the firm. Additional breach conditions include the failure of the Contractor to maintain insurance requirements which are outlined in the Insurance Requirements attachment of this RFP.

**6.7 Remedies in Case of Breach**

If at the end of five (5) service days from the date of a written notice, the Consultant has not taken the necessary corrective action, OHA will send notification to the Consultant of its intent to proceed with termination of the contract. Termination will occur 30 calendar days from the date of the termination notice. The termination notice will not be rescinded without the written authorization of the Contract Compliance and General Services Division Manager.

### Exhibit A – Cost Form

Please complete this form and submit it with your proposal. Other fees that are not identified below (admin support, copying, etc.) should be itemized on a separate document.

For purposes of scoring the fee portion of the evaluation criteria (Section 5.5 Evaluation Criteria) the grand total of the primary contact hourly rate and travel rate will be used to compare fees and award points in the area of cost. The hourly rates submitted in the other categories will be used for informational purposes only.

Rates identified below should include travel, research, Lexis Nexis and West Law.

#### Hourly Rates for As-Needed Legal Services

##### Initial Term (Years 1-2) Rates

	Column A Rates		Column B Est. Time <small>(for calculation purposes only. Not an estimate of actual hours worked)</small>	Column C Totals
Partner/Primary Contact	Hourly Rate: \$: _____	X	100 hours	\$: _____
Travel Rate per day <small>(Please include all applicable travel cost. Travel fees, mileage cost, etc.)</small>	Travel Fee: \$: _____	X	1 time a year	\$: _____
<b>Grand Total:</b>				
\$: _____ <small>(Add totals in Column C – this figure will be used to calculate points in the area of cost)</small>				

	Option Year 1 Hourly Rate	Option Year 2 Hourly Rates	Option Year 3 Hourly Rates
Partner/Primary Contact	\$: _____	\$: _____	\$: _____
Attorney	\$: _____	\$: _____	\$: _____
Associates	\$: _____	\$: _____	\$: _____
Paralegal	\$: _____	\$: _____	\$: _____
Travel Rate	\$: _____	\$: _____	\$: _____



## Fixed Fee by Project: Tax Credit Syndication

Additional services or services rendered for deals that do not close for any reason, will be billed at hourly rates.

For purposes of scoring the fee portion of the evaluation criteria (Section 5.5 Evaluation Criteria) the fixed fee per project will be used to compare fees and award points in the area of cost. The hourly rates submitted in the other categories will be used for informational purposes only.

### Initial Term (Years 1-2) Rates

**Tax Credit Syndication Fixed Fee** \_\_\_\_\_  
(fee must include all travel cost)

	Year 1 Hourly Rate	Year 2 Hourly Rate
<b>Partner/Primary Contact</b>	\$: _____	\$: _____
<b>Attorney</b>	\$: _____	\$: _____
<b>Associates</b>	\$: _____	\$: _____
<b>Paralegal</b>	\$: _____	\$: _____

### Option Year Rates

	Option Year 1 Hourly Rate	Option Year 2 Hourly Rate	Option Year 3 Hourly Rate
<b>Partner/Primary Contact</b>	\$: _____	\$: _____	\$: _____
<b>Attorney</b>	\$: _____	\$: _____	\$: _____
<b>Associates</b>	\$: _____	\$: _____	\$: _____
<b>Paralegal</b>	\$: _____	\$: _____	\$: _____
<b>Tax Credit Syndication Fixed Fee</b> <small>(travel included)</small>	\$: _____	\$: _____	\$: _____

**Fixed Fee by Project: Tax Credit Syndication**

**Fixed Fee by Project: Bond Counsel**

Additional services or services rendered for deals that do not close for any reason, will be billed at hourly rates.

For purposes of scoring the fee portion of the evaluation criteria (Section 5.5 Evaluation Criteria) the fixed fee per project will be used to compare fees and award points in the area of cost. The hourly rates submitted in the other categories will be used for informational purposes only.

**Initial Term (Years 1-2) Rates**

**Bond Counsel Fixed Fee** \_\_\_\_\_  
 (fee must include all travel cost)

	<b>Year 1 Hourly Rate</b>	<b>Year 2 Hourly Rate</b>
<b>Partner/Primary Contact</b>	\$: _____	\$: _____
<b>Attorney</b>	\$: _____	\$: _____
<b>Associates</b>	\$: _____	\$: _____
<b>Paralegal</b>	\$: _____	\$: _____

**Option Year Rates**

	<b>Option Year 1 Hourly Rate</b>	<b>Option Year 2 Hourly Rate</b>	<b>Option Year 3 Hourly Rate</b>
<b>Partner/Primary Contact</b>	\$: _____	\$: _____	\$: _____
<b>Attorney</b>	\$: _____	\$: _____	\$: _____
<b>Associates</b>	\$: _____	\$: _____	\$: _____
<b>Paralegal</b>	\$: _____	\$: _____	\$: _____
<b>Bond Counsel Fixed Fee</b> (travel included)	\$: _____	\$: _____	\$: _____

## EXHIBIT J

### INSURANCE FOR CONSULTANTS

Consultant shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

#### *Minimum Scope of Insurance*

Coverage shall be as least as board as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions or Professional Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

#### *Minimum Limits of Insurance*

Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either (Including operations, products and completed operations, as applicable.) the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability: \$1,000,000 per accident for bodily injury and property damage.
4. Errors and Omissions Liability: \$1,000,000 per occurrence.
5. Professional Liability Insurance: \$1,000,000 per occurrence.

#### *Deductible and Self-Insured Retentions*

Any deductibles or self-insured retentions must be declared to and approved by the Authority. At the option of the Authority, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Authority guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### ***Other Insurance Provisions***

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions.

1. The Authority, its commissioners, members, officers, agents, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Authority, its commissioners, members, officers, agents, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after (30) days' prior written notice by certified mail, returned receipt requested, has been given to the Authority.
4. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Authority, its commissioners, members, officers, agents, employees and volunteers.
5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Workers' Compensation and Employers Liability Coverage. Insurer shall agree to waive all rights of subrogation against the Authority and its respective commissioners, members, officers, agents and employees for losses arising from work performed by Contractor or for the Authority.

Claims Made Coverage. If General Liability and/or Errors and Omissions coverage are written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
4. A Copy of the claims reporting requirements must be submitted to the Authority for review.

Subcontractors. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein.

#### *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI, unless otherwise acceptable to the Authority. Exception may be made for the State Compensation Insurance Fund when not specially rated.

#### *Verification of Coverage*

Consultant shall furnish the Authority with certificates of insurance and with original endorsements evidencing coverage required by this clause. All certificates and endorsements are to be received and approved by the Authority before work commences. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## EXHIBIT K

### OAKLAND HOUSING AUTHORITY

### LEGAL SERVICES CONTRACT

This LEGAL SERVICES CONTRACT ("Contract") is entered into as of \_\_\_\_\_, 2017 ("Effective Date"), by and between the HOUSING AUTHORITY OF THE CITY OF OAKLAND, a public body, corporate and politic ("OHA"), and \_\_\_\_\_ (the "Attorney").

NOW, THEREFORE, OHA and the Attorney agree as follows:

**1. SCOPE OF SERVICES**

Attorney shall provide the services described on Exhibit A, "Scope of Services".

**2. TIME OF PERFORMANCE**

The term of this Contract shall begin on the Effective Date and continue for two (2) years, with two (2) one (1) - year renewal options unless terminated earlier as herein provided.

**3. COMPENSATION, BILLING RATES, AND METHOD OF PAYMENT**

A. Compensation. The maximum annual amount payable for this Contract is \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Any increase in the maximum amount payable must be approved by the OHA Board of Commissioners. OHA shall compensate Attorney according to the rate schedule attached as Exhibit B. Costs will be billed in addition to professional fees.

(1) Billings are to be directed to Accounts Payable Finance Department, Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612.

(2) Invoices shall be accompanied with the following information, which may be supplied by computer printout:

(a) a summary, listing names of attorneys and paralegals who provided legal services, total hours for each and their hourly rates;

(b) number of hours worked per attorney or paralegal, on a daily basis;

(c) brief description of actual work done by each person (detailed narratives are not necessary), on a daily basis; and

(d) itemization of disbursements and costs.

(3) Payments made by Attorney to others, including other firms and/or witnesses, for services in connection with the matter shall be included in the statement and supporting invoices shall be attached to the billing.

B. Method of Payment. Attorney will submit monthly billing invoices to OHA. The invoices shall include the billing amount, total hours invoiced, hourly billing rate, description of services rendered and costs incurred, and supporting documentation. OHA staff will review these invoices and take reasonable steps to secure payment within 30 days of receipt.

C. Taxes. No payroll or employment taxes of any kind will be withheld or paid by OHA on behalf of Attorney. OHA will not treat Attorney as an employee with respect to the Contract services for any purpose, including federal and state tax purposes. Attorney understands and agrees that it is Attorney's responsibility to pay all taxes required by law, including self-employment social security tax. OHA will issue an IRS 1099 Form, or other appropriate tax reporting document, to Attorney for the Contract services.

D. Benefits. Attorney will not be eligible for, and will not participate in, any health, pension, or other benefit of OHA which exists solely for the benefit of OHA employees during the Contract term.

**4. NO PERSONAL LIABILITY**

No member, official or employee of OHA shall be liable personally to Attorney or any successor in interest in the event of any default or breach by OHA or for any amount which may become due to Attorney or any successor or on any obligation under the terms of this Contract.

**5. ASSIGNMENT OF CONTRACT**

Attorney shall not assign this Contract, or any part thereof, without the prior express written consent of OHA.

**6. EXAMINATION AND RETENTION OF RECORDS**

- A. Access shall be given by the Attorney to OHA, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers or other records of the Attorney which are directly pertinent to this Contract, for the purpose of making an audit, examination, excerpts, and transcripts.
- B. Attorney shall retain all records pertinent to this Contract for three (3) years after OHA has made final payment and all related pending matters are closed.

**7. CONFIDENTIALITY/PROPERTY OF OHA**

All of the reports, information, data or other materials under this Contract, including Attorney's opinions and conclusions based upon such items, are confidential. Unless otherwise stated in the Scope of Services, all such reports, information, data or other materials and work product shall become the property of OHA.

**8. HUD REQUIREMENTS**

Attorney agrees to comply with all relevant HUD requirements including the Section 3 Clause, attached hereto as Exhibit C and HUD Form 5370-C (10/2006), attached hereto as Exhibit D. In the event there is a conflict between this Contract and the HUD requirements set forth in Exhibits C and D, the HUD requirements shall prevail.

**9. INDEMNIFICATION**

Attorney shall defend, hold harmless and indemnify OHA and its commissioners, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability, including attorneys' fees, arising out of or connected with Attorney's performance of this Contract and any of Attorney's operations or activities related to this Contract, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified or held harmless.

**10. INDEPENDENT CONTRACTOR**

Attorney hereby declares that it is engaged in an independent business and agrees to perform its services as an independent contractor and not as the agent or employee of OHA. Attorney has and hereby retains the right to exercise full control and supervision of the services and work to be provided under this Contract and full control over the employment, direction, compensation and discharge of all persons assisting it in the performance of the services and work hereunder. Attorney agrees to be solely responsible for all matters relating to payment of employees, including, but not limited to, compliance with all federal, state and local payroll tax and withholding requirements, workers' compensation requirements and all regulations governing such matters. Attorney agrees to be



solely responsible for its own acts and those of its subordinates and employees during the term of the Contract.

**11. INSURANCE**

Attorney must comply with OHA's "Insurance Requirements for Consultants" attached hereto as Exhibit E.

**12. DISCLAIMER OF GUARANTY**

Although Attorney may offer an opinion about possible results regarding any specific matter handled by Attorney, Attorney cannot guarantee any particular result. OHA acknowledges that Attorney makes no promises about the outcome of any specific matter and any opinion offered by Attorney in the future will not constitute a guaranty.

**13. CONFLICTS OF INTEREST**

Pursuant to the State Bar Act, California Business and Professions Code Section 6000 et sequitur, and the California State Bar Rules of Professional Conduct, the attorney/law firm must disclose any conflicts of interest which would prevent it from representing OHA, or which might prevent it from representing OHA without OHA's informed written consent. At this time Attorney is not aware of any relationship with any other party interested in the subject matter of Attorney's services for OHA under this Agreement. As long as Attorney's services for OHA continue under this Agreement, Attorney will not agree to provide legal services for any such party without OHA's prior written and informed consent.

**14. NONDISCRIMINATION**

There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the performance of this Contract. Attorney will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status). Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations to clients or the general public.

**15. TERMINATION**

OHA may, by written notice, at any time prior to the completion of the term, terminate this Contract for any reason, including but not limited to, convenience of OHA, default by the Attorney, or circumstances beyond the control of the Attorney. Upon giving OHA reasonable written notice, Attorney will have the right to withdraw as counsel for any reason permitted by the applicable rules of professional conduct, including failure to comply with the provisions of this

agreement. In the event of any termination, OHA shall compensate the Attorney for work appropriately completed as of the date of the termination notice or the date of termination specified in and directed by such notice. Upon payment of the amount due, OHA shall be under no further obligation to the Attorney, financial or otherwise.

**16. MISCELLANEOUS PROVISIONS**

Notices. All notices, demands, consents or approvals required under this Contract shall be in writing and shall be deemed given when delivered personally or by facsimile transmission or three (3) business days after being deposited in the U.S. Mail, first class postage prepaid, return receipt requested, addressed as follows:

If to OHA:                   Housing Authority of the City of Oakland  
                                  1619 Harrison Street  
                                  Oakland, CA 94612  
                                  Attn: \_\_\_\_\_

If to Attorney: \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_

or to such other addresses as the parties may designate by notice as set forth above.

- A. Successors and Assigns. This Contract shall be binding upon and inure to the benefit of the successors and assigns of OHA and Attorney. Where the term "Attorney" or "OHA" is used in this Contract, it shall mean and include their respective successors and assigns; provided, however, that OHA shall have no obligation under this Contract to, nor shall any benefit of this Contract accrue to, any unapproved successor or assign of Attorney where OHA approval of a successor or assign is required by this Contract.
  
- B. Modification, Waiver and Amendment. Any modification, waiver or amendment of any of the provisions of this Contract must be in writing and signed by both OHA and Attorney.

- C. Entire Contract. This Contract represents the complete agreement between the parties as to the matters described herein, and there are no oral understandings between Attorney and OHA affecting this Contract not set forth herein. This Contract supersedes all previous negotiations, arrangements, agreements and understandings between Attorney and OHA with respect to the subject matter hereof.
- D. Severability. If any provision of this Contract shall be determined to be illegal or unenforceable, such determination shall not affect any other provision and all such other provisions shall remain in full force and effect.
- E. Governing Law. This Contract shall be governed by the laws of the State of California. It is the responsibility of Attorney to be informed of local, state and federal laws and requirements applicable to this Contract and to perform all work in compliance with those laws and requirements.
- F. Headings. Titles of parts or sections of this Contract are inserted for convenience only and shall be disregarded in construing or interpreting its provisions.
- G. Attorneys' Fees. In any action or proceeding arising out of the interpretation of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and costs.
- I. Alternative Dispute Resolution. In the event of a dispute between the parties regarding the interpretation of this Contract, the parties may agree to mediation or another form of alternative dispute resolution.
- J. Authority. The undersigned represents and warrants that he or she has full power and authority to enter into this Contract and to bind the Attorney in accordance with its terms.
- K. Designated Representative. The initial designated representative for OHA for this Contract is \_\_\_\_\_. The initial Attorney designated representative for this Contract is \_\_\_\_\_.

IN WITNESS WHEREOF OHA and Attorney have executed this Contract as of the date first above written.

By: \_\_\_\_\_

\_\_\_\_\_  
Federal Tax Identification No.

HOUSING AUTHORITY OF THE CITY OF  
OAKLAND, a public body, corporate and politic

By: \_\_\_\_\_  
Eric Johnson, Executive Director

**SAMPLE**

**EXHIBIT A  
SCOPE OF SERVICES**

**[Attach a description of the services to be provided]**

**SAMPLE**

**EXHIBIT B  
BILLING RATES**

***ATTORNEYS AND RATE SCHEDULE***

**[Attach list with agreed upon rate schedule, including  
hourly rates for attorneys and paralegals, and reimbursable expenses]**

## SAMPLE

### EXHIBIT C SECTION 3 CLAUSE

#### Section 3 Clause (12 U.S.C. 1701u) (24 CFR Part 135)

A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the U.S. Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the Section 3 covered project.

B. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of the Department of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department of Housing and Urban Development issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The Attorney will send to each labor organization or representative or workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The Attorney will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subAttorney is in violation of regulations issued by the Secretary of the Department of Housing and Urban Development, 24 CFR Part 15. The Attorney will not subcontract with any subAttorney where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subAttorney has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department of Housing and Urban Development issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided under this Contract and shall be binding upon Contactor, its successors and assigns. Failure to fulfill these requirements shall subject the Attorney, its subAttorneys, successors and assigns to those sanctions specified by 24 CFR Part 135.

**SAMPLE**

**EXHIBIT D**

**HUD Form 5370-C (10/2006)**



EXHIBIT E  
INSURANCE REQUIREMENTS

***INSURANCE REQUIREMENTS FOR CONSULTANTS***

Consultant shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

*Minimum Scope of Insurance*

Coverage shall be as least as board as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions or Professional Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

***Minimum Limits of Insurance***

Consultant shall maintain limits no less than:

1. General Liability:                      \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either (Including operations, products and completed operations, as applicable.) the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:                \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:    \$1,000,000 per accident for bodily injury and property damage.
4. Errors and Omissions Liability:    \$1,000,000 per occurrence.
5. Professional Liability Insurance:   \$1,000,000 per occurrence.

## **SAMPLE**

### ***Deductible and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the Authority. At the option of the Authority, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Authority guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### ***Other Insurance Provisions***

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions.

1. The Authority, its commissioners, members, officers, agents, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Authority, its commissioners, members, officers, agents, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after (30) days' prior written notice by certified mail, returned receipt requested, has been given to the Authority.
4. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Authority, its commissioners, members, officers, agents, employees and volunteers.
5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Workers' Compensation and Employers Liability Coverage. Insurer shall agree to waive all rights of subrogation against the Authority and its respective commissioners, members, officers, agents and employees for losses arising from work performed by Contractor or for the Authority.

Claims Made Coverage. If General Liability and/or Errors and Omissions coverage are written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

## **SAMPLE**

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
4. A Copy of the claims reporting requirements must be submitted to the Authority for review.

Subcontractors. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein.

### *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI, unless otherwise acceptable to the Authority. Exception may be made for the State Compensation Insurance Fund when not specially rated.

### *Verification of Coverage*

Consultant shall furnish the Authority with certificates of insurance and with original endorsements evidencing coverage required by this clause. All certificates and endorsements are to be received and approved by the Authority before work commences. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

**PROFILE AND CERTIFICATION FORM (Page 1 of 2)**

(1) Prime \_\_\_\_ Sub-contractor \_\_\_\_ (This form must be completed by and for each).

(2) Name of Firm: \_\_\_\_\_ Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

(3) Street Address, City, State, Zip: \_\_\_\_\_

(4) Primary Contact for this Project: \_\_\_\_\_ Email Address: \_\_\_\_\_

(5) Identify Principals/Partners in Firm (Attach **professional resumes** for each):

NAME	TITLE	% OF OWNERSHIP

(6) Identify the individual(s) that will act as project manager and any other supervisory personnel that will work on project; please attach **professional resumes** for each. (Do not duplicate any resumes required above):

NAME	TITLE

(7) Bidder Diversity Statement: You must circle all of the following that apply to the ownership of this firm and enter where provided the correct percentage (%) of ownership of each:

- Caucasian American (Male) \_\_\_\_\_%     
  Public-Held Corporation \_\_\_\_\_%     
  Government Agency \_\_\_\_\_%     
  Non-Profit Organization \_\_\_\_\_%

Resident- (RBE), Minority- (MBE), or Woman-Owned (WBE) Business Enterprise (Qualifies by virtue of 51% or more ownership and active management by one or more of the following:

- Resident-Owned \_\_\_\_\_%     
  African American \_\_\_\_\_%     
  \*\*Native American \_\_\_\_\_%     
  Hispanic American \_\_\_\_\_%     
  Asian/Pacific American \_\_\_\_\_%     
  Hasidic Jew \_\_\_\_\_%     
  Asian/Indian American \_\_\_\_\_%

- Woman-Owned (MBE) \_\_\_\_\_%     
  Woman-Owned (Caucasian) \_\_\_\_\_%     
  Disabled Veteran \_\_\_\_\_%     
  Small Business \_\_\_\_\_%     
  Other (Specify): \_\_\_\_\_%

If applicable, WMBE Certification Number: \_\_\_\_\_  
 Certified by (Agency): \_\_\_\_\_

(8) Federal Tax ID No.: \_\_\_\_\_

(9) [APPROPRIATE JURISDICTION] Business License No.: \_\_\_\_\_

(10) State of \_\_\_\_\_ License Type and No.: \_\_\_\_\_

**PROFILE AND CERTIFICATION FORM (Page 2 of 2)**

(11) **Insurance Certification:** The undersigned party submitting this bid hereby certifies that the firm can meet and comply with OHA's "Insurance Requirements" attached hereto. (See 'OHA Insurance Requirements' attached) Copies of insurance certificates may be submitted with the proposal or the information completed below. The insurance policies must name OHA as an additional insured and maintained throughout the term of the contract. The firm(s) must provide OHA with Certificates of Insurance for the preceding coverage. The insurance policies must provide a 30-day notice of cancellation and be primary to any other insurance carried by OHA.

Worker's Compensation Insurance Carrier: \_\_\_\_\_  
Policy No.: \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
General Liability Insurance Carrier: \_\_\_\_\_  
Policy No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
Professional Liability Insurance Carrier: \_\_\_\_\_  
Policy No. \_\_\_\_\_ Expiration Date: \_\_\_\_\_

(12) **Debarred Statement:** Has this firm, or any principal(s) ever been debarred from providing any services by the Federal Government, any state government, the State of \_\_\_\_\_, or any local government agency within or without the State of \_\_\_\_\_? Yes  No   
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

(13) **Disclosure Statement:** Does this firm or any principals thereof have any current, past personal or professional relationship with any Commissioner or Officer of the HA? Yes  No   
If "Yes," please attach a full detailed explanation, including dates, circumstances and current status.

(14) **Non-Collusive Affidavit:** The undersigned party submitting this bid hereby certifies that such bid is genuine and not collusive and that said bidder entity has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of affiant or of any other bidder, to fix overhead, profit or cost element of said bid price, or that of any other bidder or to secure any advantage against the OHA or any person interested in the proposed contract; and that all statements in said bid are true.

(15) **Indemnification Certification:** The undersigned party submitting this bid hereby certifies that the firm expressly agrees to indemnify, defend and hold OHA, its commissioners, officers, and employees, free and harmless from and against any and all loss, liability, expense, claims, costs, suits, damages, including attorney's fees arising out of the consultant's operation or performance under the resultant contract. The consultant will also indemnify OHA for damages as a result of any act or omission not authorized by OHA on the part of the consultant or any agent or person employed by the consultant."

(16) **Section 3 and Labor Compliance:** The undersigned party submitting this bid hereby certifies that the firm can meet and comply with OHA's "Section 3 Requirements" and Labor Compliance standards including submission of certified payrolls and paying employees the required prevailing wages. (Economic Opportunities Policy, Contractor's Summary Guide to Section 3 Compliance, and Labor Compliance standards may be found on our website at [www.oakha.org/ Procurement](http://www.oakha.org/Procurement).)

(17) **Labor Code Certification:** The undersigned party submitting this bid hereby certifies that party submitting this bid hereby is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Agreement".

(18) **Verification Statement:** The undersigned bidder hereby states that by completing and submitting this form he/she is verifying that all information provided herein is, to the best of his/her knowledge, true and accurate, and agrees that if the HA discovers that any information entered herein is false, that shall entitle the HA to not consider nor make award or to cancel any award with the undersigned party.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Company

## SECTION 3 CLAUSE (24 CFR 135.38)

***This contract is subject to the following conditions under Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).***

- A. The work to be performed under this contract is subject to the 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 HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's 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 Part 135 regulations.
- 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 or 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 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 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.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprise. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).



Oakland Housing  
Authority

## Contractor's Summary Guide to Section 3 Compliance

The purpose of Section 3 of the Housing and Urban Development Act of 1968 as amended (12 U.S.C. 1701u) (section 3), and 24 CFR Part 135, is to ensure that training, employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns, which provide economic opportunities to low- and very low-income persons." **For the complete text of the Section 3 regulations, visit [www.hud.gov/section3](http://www.hud.gov/section3).**

### **Oakland Housing Authority's Section 3 Economic Opportunities Policy (included in bid documents)**

Oakland has one of the highest unemployment rates in the Bay Area. Oakland Housing Authority (OHA) residents make up over 10% of Oakland's population. OHA developed its **Economic Opportunities Policy (EOP)** to comply with the Housing and Urban Development (HUD) Section 3 regulations and ensure that, to the greatest extent feasible, economic opportunities are provided to low- and very low-income persons and to Section 3 business concerns within the city of Oakland. All contractors undertaking Section 3 covered projects and activities on behalf of OHA are expected, to the greatest extent feasible, to meet the numerical goals set forth below. The policy does not apply to contractors who furnish only materials or supplies and do not undertake installation of materials or supplies. The **EOP** is also available from OHA's website [www.oakha.org/procurement/sec3EcoOpportPolicy.pdf](http://www.oakha.org/procurement/sec3EcoOpportPolicy.pdf).

### **Section 3 Requirement for All Bidders**

As part of the application or bidding process, a Section 3 Business Preference and Action Plan are included in bid documents. Contractors have the option to request Certification as a Section 3 business; however, every proposer **MUST** complete the Action Plan and submit it with their bid, even if no hires are projected.

Certification for Business Seeking Section 3 Business Preference form: Everyone must complete the top portion (check one box, name of business etc.) and sign at the bottom. Fill in the other parts **ONLY** if you are claiming Section 3 business status.

Action Plan (3 pages): Everyone must complete the top portion listing your company etc., where applicable, and sign every page. If you **do not** anticipate new hires, note that in the table on page 1 and 3. If you **do** anticipate new hires, then use page 1 to detail the job categories and page 3 to describe how you will fill those positions.

### **Section 3 Requirements for Awardees**

#### **Baseline Reporting and Hiring Projections Form**

Prior to the Notice to Proceed, the contractor/subcontractor will be responsible for documenting the current workforce (baseline) and providing more accurate hiring projections per job classification than those described in the Action Plan. The Plan that is approved will become part of the contractual agreements.

#### **Hiring Goals**

The Section 3 requirement is triggered when there is a need for **new** economic opportunities, such as individual employment, contracting, or subcontracting. The regulation requires that contractors and subcontractors provide, **to the greatest extent feasible**, economic opportunities (training, employment, and contracting) to low and very-low income residents Section 3 businesses.

Contractors and subcontractors are required to make every effort to the greatest extent feasible to meet the OHA's numerical hiring goals of having Section 3 qualified employees make up **30% of their total new-hires**. **Firms must seek to maintain this percentage throughout the life of the project.** If these goals are not met, the contractors are expected to show documentation demonstrating their efforts to hire Section 3 candidates by exhausting all available hiring sources. While a contractor receives credit for hiring low-income residents of Oakland, **first priority should be given to residents of the Oakland Housing Authority**. This includes residents in both the public housing and Section 8 programs.

## Hiring Priorities

First priority (OHA residents): Residents of the development where the work is being performed  
Second priority (OHA residents): Other residents of Oakland Housing Authority owned or managed properties  
Third priority (Oakland residents): Other residents within the city of Oakland that meet the low-income requirements (see definition of **Section 3 Resident** below).

## Resident Referral Process

OHA is committed to working with general contractors and subcontractors to help them reach their Section 3 goals. Therefore, we have established a pre-screening and referral process to identify qualified OHA residents who satisfy the first and second hiring priorities (above). This process ensures that each candidate is in good standing with the housing authority and has a background that qualifies him/her to perform the essential functions of the job.

To ensure the best possible match, it is important that contractors communicate their hiring needs to OHA well in advance of the project start date. We request at least 2 business days' notice before the employee's start date, but earlier notice is preferred. We will work with you to identify a pool of candidates for each position. If we cannot provide you with a candidate, we will grant you a waiver to document your efforts to meet the Section 3 goals.

**Union Contractors:** OHA's Family and Community Partnerships department (FCP) has established a list of current OHA residents in construction trade unions that is sent to contractors on a regular basis. If there is no candidate that meets your hiring needs, you are encouraged to consider sponsoring an OHA resident who is not a member of a trade union to meet your Section 3 hiring goals.

Please contact OHA at [S3hire@oakha.org](mailto:S3hire@oakha.org) or 510-587-5160 for a list of qualified residents, to request a candidate, or verify the Section 3 eligibility of any prospective hire. For more information about providing economic opportunities to OHA resident's contact:

Employment Development Coordinator  
Family & Community Partnerships Department  
Phone: 510.587.5160  
Fax: 510.587.5141  
Email: [S3hire@oakha.org](mailto:S3hire@oakha.org)

## New Hire Section 3 Information Form

General contractors and subcontractors will be provided this form upon award. Every **new hire** should be requested to complete the form. The form provides the means to determine Section 3 eligibility of the employee. The forms should be submitted to OHA as soon as possible after hiring for verification of Section 3 status.

## Monthly Reports

OHA requires monthly reports listing all new hires and Section 3 hires from all contractors and subcontractors on Section 3 covered projects. A sample report will be provided. Reports shall be due on the fifth day of each month for the preceding month. These reports shall be submitted to:

Rufus Davis, Labor and Section 3 Compliance Officer  
Office of Program Administration  
Phone: 510.587.2176  
Fax: 510.587.2124  
Email: [jrdavis@oakha.org](mailto:jrdavis@oakha.org)

## Record Maintenance and Documentation

All projects and activities that are subject to Section 3 requirements shall maintain comprehensive documentation of their Section 3 outreach efforts and implementation activities. Section 3 documentation files should be clearly maintained and be available for review by Oakland Housing Authority and/or HUD officials.

## Compliance Reviews

OHA staff will conduct regular compliance reviews, which consist of comprehensive analysis and evaluation of the contractor's compliance with Section 3. Where noncompliance is found, OHA will notify the contractor of the deficiency and make recommendations for corrective actions.



## Useful Definitions

### **Business Concern**

A business entity formed in accordance with state law, and which is licensed under state, county or municipal law to engage in the type of business activity for which it was formed.

### **“Greatest Extent Feasible”**

Recipients of Section 3 financial assistance must make every effort within their disposal to meet the regulatory requirements. For instance, this may mean going a step beyond normal notification procedures for employment and contracting opportunities by developing strategies that will specifically target Section 3 residents and businesses for these new economic opportunities.

### **Household Income Levels**

Low and very-low income limits are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the median income for each locality by household size or number of people residing in one house. HUD income limits can be obtained from [www.huduser.org/portal/datasets/il.html](http://www.huduser.org/portal/datasets/il.html).

### **New Hire**

A new hire means a full-time employee for a new permanent, temporary, or seasonal position that is created as a direct result of the expenditure of federal funds on Section 3 covered projects. Any employee that is not on the payroll of a contractor or developer on the day [i.e., that a purchase order is issued or the day a contract is signed or agreed upon] that the Section 3 covered assistance was provided, is considered a new hire.

### **Section 3 Business Concern**

A business concern that meets one or more of the following requirements:

- 51% or more owned by Section 3 residents
- 30% or more of permanent, full-time workforce consists of Section 3 residents
- Provides evidence to subcontract at least 25% of the dollar awarded to qualified Section 3 businesses

### **Section 3 Resident**

- (1) An Oakland Housing Authority public housing resident or Section 8 voucher holder; or
- (2) An individual who resides in the service area (Oakland) in which the Section 3 covered assistance is expended, and whose income status is as follows:

<b>Number of People in Household</b>	<b>Annual Household Income Limits</b> (Source: 24 CFR 570.3)
1	\$45,100 or less
2	\$51,550 or less
3	\$58,000 or less
4	\$64,400 or less
5	\$69,600 or less
6	\$74,750 or less
7	\$79,900 or less
8	\$85,050 or less

(Income limits eff. 12/11/2012)

Questions regarding the Oakland Housing Authority  
Section 3 Program should be addressed to:

Rufus Davis, Labor and Section 3 Compliance Officer  
Oakland Housing Authority  
1801 Harrison Street  
Oakland, CA 94612  
Phone: 510.587.2176  
Fax: 510.587.2124  
Email: [rdavis@oakha.org](mailto:rdavis@oakha.org)



# Section 3 Business Certification and Action Plan

Section 3 Business Certification – 1 page

Check this box if you are **not** claiming Section 3 business status. Complete Section 1 and the signature block at the bottom of this page and proceed to the **Section 3 Action Plan**.

## SECTION 1

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Type of Business (Check One):  Corporation  Partnership  Sole Proprietorship  Other

Project (Bid/RFP #) \_\_\_\_\_ Business Activity \_\_\_\_\_

## SECTION 2

**Current Section 3 Status:** The undersigned bidder/proposer hereby certifies that it is a Section 3 business concern and attaches relevant documentation, **as applicable**, to support such claim.

**Select only one option.**

1. A business claiming status as a Section 3 resident-owned business concern (ROB):

**Initial here to select this option** \_\_\_\_\_

- |   |  |
|---|--|
| <input type="checkbox"/> OHA resident lease   | <input type="checkbox"/> List of owners/stockholders and % of each |
| <input type="checkbox"/> Copy of receipt of public assistance                               | <input type="checkbox"/> Latest board minutes appointing officers  |
| <input type="checkbox"/> Other evidence of income status                                    | <input type="checkbox"/> Articles of incorporation                 |
| <input type="checkbox"/> Fictitious or Assumed Business Name Certificate                    | <input type="checkbox"/> Partnership agreement                     |
| <input type="checkbox"/> Organization chart with names and titles and brief job description |  |

2. A business claiming Section 3 status because at least 30% of its permanent full-time employees are currently Section 3 residents or, within 3 years of the date of first employment with the business concern, were Section 3 residents. If a business claims this option, the 30% employment requirement must be maintained for the entire project. **Initial here to select this option** \_\_\_\_\_

- |  |   |
|--|---|
| <input type="checkbox"/> List of all current full time employees                           | <input type="checkbox"/> List of all employees claiming Section 3 status                                |
| <input type="checkbox"/> OHA residential lease (less than 3 years from date of employment) | <input type="checkbox"/> Other evidence of Section 3 status (less than 3 years from date of employment) |

3. A business claiming Section 3 status by subcontracting 25% or more of the dollar award to qualified Section 3 businesses (as set forth in Options 1 and 2). **Initial here to select this option** \_\_\_\_\_

- Provide a list of intended Section 3 business subcontractors with subcontract amount.
- Include this Section 3 Certification form and all supporting documentation for each planned Section 3 business subcontractor.

**If you are or become certified as a Section 3 business, do you grant OHA permission to share your business contact information with firms seeking to contract with Section 3 businesses?**  Yes  No

**I attest that the above information is true and correct.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



Oakland Housing Authority

### Section 3 Action Plan (2 pages)

All firms and individuals bidding on any Section 3 covered contract with the Oakland Housing Authority (OHA) **MUST COMPLETE AND SUBMIT THIS ACTION PLAN WITH THE BID, OFFER, OR PROPOSAL.** Any solicitation response that does not include this document (completed and signed) will be considered non-responsive and not eligible for award.

#### PRELIMINARY STATEMENT OF CURRENT WORKFORCE AND HIRING NEEDS

*THIS PLAN OUTLINES YOUR COMMITMENT TO OHA'S SECTION 3 HIRING GOALS*

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PROJECT (BID/RFP#): \_\_\_\_\_ GENERAL  SUBCONTRACTOR

JOB CATEGORY: EXAMPLES ADMINISTRATIVE ASST., OFFICE MANAGER, CLERK, PROJECT MANAGER, EQUIPMENT MECHANIC, JANITORIAL, HOUSING MANAGEMENT, LABORER, LANDSCAPER, GLAZIER-JOURNEYMAN, GLAZIER-APPRENTICE, PLUMBER-JOURNEYMAN, PLUMBER-APPRENTICE	(A) # of CURRENT Employees (Core Staff)	(B) PROJECTED # of New Hires FOR THIS PROJECT	(C) PROJECTED # of Section 3 Hires	(D) PROJECTED Section 3 Hires as a Percentage of NEW HIRES
				%
				%
				%
				%
				%
				%
				%
				%
OTHER, PLEASE LIST.				%

\_\_\_ (Check here and attach another sheet if applicable)

Check this box if contractor does not anticipate triggering the regulation by the need for new hiring or subcontracting opportunities. Complete the signature block at the bottom of this page.

**I attest that the above information is true and correct. The company certifies that the above table represents the appropriate number of employee positions and also represents the number of Section 3 employees that the company proposes to hire.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Section 3 Action Plan (continued)

### EFFORTS TO ACHIEVE SECTION 3 COMPLIANCE

Indicate the efforts your organization will take to direct employment and other economic opportunities, to the greatest extent feasible, to low-income residents. Think about how you can leverage your resources and expertise to foster training and employment opportunities for Section 3 residents. **Examples** include, but are not limited to, the following. Check all that apply.

- Refer to any list of pre-screened job-ready applicants provided by OHA's Department of Family and Community Partnerships (FCP) (*REQUEST A LIST from FCP at [S3hire@oakha.org](mailto:S3hire@oakha.org) or 510-587-5160*).
- Utilize and manage union privileges such as name-call, transfer, rehire, and sponsorship.
- Financially sponsor OHA resident(s) in trainings, certifications, professional mentorships, etc.
- Distribute flyers door-to-door to OHA owned and managed properties.
- Run multiple advertisements in local media such as newspapers and radio stations, and/or Internet-based job-posting websites announcing the hiring and contracting opportunities.
- Contract with certified Section 3 businesses, in construction and non-construction trades (*REQUEST A LIST from Rufus Davis at OHA, [rdavis@oakha.org](mailto:rdavis@oakha.org) or 510-587-2176*).
- Post signs at the entrance to the job site stating that it is a Section 3 covered project.
- Sponsor (schedule, advertise, finance, or provide in-kind services) a job informational meeting to be conducted by the housing authority or a contractor representative.
- Undertake job counseling, education and related programs in association with local educational institutions.
- Other: \_\_\_\_\_

---

---

---

---

---

---

---

---

---

---

**I attest that the above information is true and correct.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# SUBCONTRACTOR FORM

**(PAGE 1 OF 2)**

The Authority requires all bidders to identify all subcontractors\* proposed as part of this bid. Failure to provide all the information herewith requested may result in rejection of the bid.

Subcontractor	Classification	Amount	Location	Ownership (check)		
				MBE	WBE	SBE
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						

*(Attach additional page if necessary.)*

MBE - Minority Business Enterprise  
WBE - Woman Business Enterprise  
SBE - Small Business Enterprise

*\*List Sub-Contractors for work in excess of ½ of 1 percent of Bidders total bid [Reference: California Public Contract Code Section 4104(a)(1)] .*

# **SUBCONTRACTOR FORM**

***(PAGE 2 OF 2)***

The Authority requires all bidders to identify **all** work that is **not** to be performed by a listed subcontractor and identifies who will perform the work, including the estimated cost for completing the specified work. Failure to provide all the information herewith requested may result in rejection of the bid.

Classification/Type of Work	Amount
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

Date \_\_\_\_\_

Name of Bidder \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone \_\_\_\_\_

Federal I.D. Number \_\_\_\_\_

# Instructions to Offerors Non-Construction

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing



- 03291 -

## 1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

## 2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

## 3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
  - (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
  - (3) letter or telegram, or
  - (4) facsimile, if facsimile offers are authorized in the solicitation.
- The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

## 4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

## 5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

## 6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

#### **7. Contract Award**

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

#### **8. Service of Protest**

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

#### **9. Offer Submission**

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]



# Certifications and Representations of Offerors

## Non-Construction Contract

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

### 1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

- (1)  has,  has not employed or retained any person or company to solicit or obtain this contract; and
- (2)  has,  has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

### 2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

- (a)  is,  is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.
- (b)  is,  is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.
- (c)  is,  is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- |   |   |
|---|---|
| <input type="checkbox"/> Black Americans    | <input type="checkbox"/> Asian Pacific Americans  |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans   |
| <input type="checkbox"/> Native Americans   | <input type="checkbox"/> Hasidic Jewish Americans |

### 3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

- (1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

- (1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);  
(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

#### 4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge 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 a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

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

(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 HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

#### 5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

#### 6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

#### 7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

\_\_\_\_\_  
Signature & Date:

\_\_\_\_\_  
Typed or Printed Name:

\_\_\_\_\_  
Title:

# General Conditions for Non-Construction Contracts

## Section I – (With or without Maintenance Work)

### U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

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

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

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

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine 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 maintenance), **greater than \$100,000 – use Sections I and II.**

### 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.
- (b) "Contract" means the contract entered into between the 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 Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (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.

#### 2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the 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 affected terms, and shall modify the contract accordingly.
- (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

- (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 contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

#### 3. Termination for Convenience and Default

- (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 this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as 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 be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (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 be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

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

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

- 
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
- (i) appeals under the clause titled Disputes;
  - (ii) litigation or settlement of claims arising from the performance of this contract; or,
  - (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)

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.

#### 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.

#### 7. Disputes

- (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 thereof which are not disposed of by agreement, shall be resolved under this clause.
- (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.
- (d) Provided the Contractor has (i) given the notice within the 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 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.

#### 8. Contract Termination; Debarment

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.

#### 9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the 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.

#### 10. Certificate and Release

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.

#### 11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge 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:
- (i) Award of the contract may result in an unfair competitive advantage; or
  - (ii) The Contractor's objectivity in performing the contract 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 of the HA.
- (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 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.

#### 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

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 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 later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable 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.

### 13. Interest of Members of Congress

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.

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

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 public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds 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 Federal actions:

- (i) The awarding of any Federal contract;
- (ii) 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 modification of any Federal contract, grant, loan, or cooperative agreement.

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.

"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 government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (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 202, title 18, U.S.C.; and,
- (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 expenditures specifically permitted by other Federal law.

"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.

"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 person for 130 working days.

"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.

(b) Prohibition.

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

(1) Agency and legislative liaison by Own 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 any covered Federal action:

(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 capabilities; and,

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

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(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 subsequent amendments.

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

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(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 receiving that Federal action.

(ii) Any reasonable payment to a person, other than 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 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 consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law 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 documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in 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 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 sale, and service capabilities; and

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

(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 payment prohibited by this clause.

(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 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.

---

## 16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (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, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any 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

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.

## 17. Dissemination or Disclosure of Information

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

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.

## 19. Other Contractors

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.

## 20. Liens

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

## 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 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 HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's 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 Part 135 regulations.
- (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

---

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.



## EXHIBIT K

### INSURANCE FOR CONSULTANTS

Consultant shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

#### *Minimum Scope of Insurance*

Coverage shall be as least as board as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions or Professional Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

#### *Minimum Limits of Insurance*

Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either (Including operations, products and completed operations, as applicable.) the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability: \$1,000,000 per accident for bodily injury and property damage.
4. Errors and Omissions Liability: \$1,000,000 per occurrence.
5. Professional Liability Insurance: \$1,000,000 per occurrence.

### ***Deductible and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the Authority. At the option of the Authority, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Authority guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### ***Other Insurance Provisions***

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions.

1. The Authority, its commissioners, members, officers, agents, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Authority, its commissioners, members, officers, agents, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after (30) days' prior written notice by certified mail, returned receipt requested, has been given to the Authority.
4. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Authority, its commissioners, members, officers, agents, employees and volunteers.
5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Workers' Compensation and Employers Liability Coverage. Insurer shall agree to waive all rights of subrogation against the Authority and its respective commissioners, members, officers, agents and employees for losses arising from work performed by Contractor or for the Authority.

Claims Made Coverage. If General Liability and/or Errors and Omissions coverage are written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
4. A Copy of the claims reporting requirements must be submitted to the Authority for review.

Subcontractors. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein.

#### *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI, unless otherwise acceptable to the Authority. Exception may be made for the State Compensation Insurance Fund when not specially rated.

#### *Verification of Coverage*

Consultant shall furnish the Authority with certificates of insurance and with original endorsements evidencing coverage required by this clause. All certificates and endorsements are to be received and approved by the Authority before work commences. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

## EXHIBIT L

### OAKLAND HOUSING AUTHORITY

### LEGAL SERVICES CONTRACT

This LEGAL SERVICES CONTRACT ("Contract") is entered into as of \_\_\_\_\_, 2017 ("Effective Date"), by and between the HOUSING AUTHORITY OF THE CITY OF OAKLAND, a public body, corporate and politic ("OHA"), and \_\_\_\_\_ (the "Attorney").

NOW, THEREFORE, OHA and the Attorney agree as follows:

**1. SCOPE OF SERVICES**

Attorney shall provide the services described on Exhibit A, "Scope of Services".

**2. TIME OF PERFORMANCE**

The term of this Contract shall begin on the Effective Date and continue for two (2) years, with two (2) one (1) - year renewal options unless terminated earlier as herein provided.

**3. COMPENSATION, BILLING RATES, AND METHOD OF PAYMENT**

A. Compensation. The maximum annual amount payable for this Contract is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Any increase in the maximum amount payable must be approved by the OHA Board of Commissioners. OHA shall compensate Attorney according to the rate schedule attached as Exhibit B. Costs will be billed in addition to professional fees.

- (1) Billings are to be directed to Accounts Payable Finance Department, Oakland Housing Authority, 1619 Harrison Street, Oakland, CA 94612.
- (2) Invoices shall be accompanied with the following information, which may be supplied by computer printout:
  - (a) a summary, listing names of attorneys and paralegals who provided legal services, total hours for each and their hourly rates;
  - (b) number of hours worked per attorney or paralegal, on a daily basis;
  - (c) brief description of actual work done by each person (detailed narratives are not necessary), on a daily basis; and

- (d) itemization of disbursements and costs.
- (3) Payments made by Attorney to others, including other firms and/or witnesses, for services in connection with the matter shall be included in the statement and supporting invoices shall be attached to the billing.
- B. Method of Payment. Attorney will submit monthly billing invoices to OHA. The invoices shall include the billing amount, total hours invoiced, hourly billing rate, description of services rendered and costs incurred, and supporting documentation. OHA staff will review these invoices and take reasonable steps to secure payment within 30 days of receipt.
- C. Taxes. No payroll or employment taxes of any kind will be withheld or paid by OHA on behalf of Attorney. OHA will not treat Attorney as an employee with respect to the Contract services for any purpose, including federal and state tax purposes. Attorney understands and agrees that it is Attorney's responsibility to pay all taxes required by law, including self-employment social security tax. OHA will issue an IRS 1099 Form, or other appropriate tax reporting document, to Attorney for the Contract services.
- D. Benefits. Attorney will not be eligible for, and will not participate in, any health, pension, or other benefit of OHA which exists solely for the benefit of OHA employees during the Contract term.

**4. NO PERSONAL LIABILITY**

No member, official or employee of OHA shall be liable personally to Attorney or any successor in interest in the event of any default or breach by OHA or for any amount which may become due to Attorney or any successor or on any obligation under the terms of this Contract.

**5. ASSIGNMENT OF CONTRACT**

Attorney shall not assign this Contract, or any part thereof, without the prior express written consent of OHA.

**6. EXAMINATION AND RETENTION OF RECORDS**

- A. Access shall be given by the Attorney to OHA, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers or other records of the

Attorney which are directly pertinent to this Contract, for the purpose of making an audit, examination, excerpts, and transcripts.

- B. Attorney shall retain all records pertinent to this Contract for three (3) years after OHA has made final payment and all related pending matters are closed.

**7. CONFIDENTIALITY/PROPERTY OF OHA**

All of the reports, information, data or other materials under this Contract, including Attorney's opinions and conclusions based upon such items, are confidential. Unless otherwise stated in the Scope of Services, all such reports, information, data or other materials and work product shall become the property of OHA.

**8. HUD REQUIREMENTS**

Attorney agrees to comply with all relevant HUD requirements including the Section 3 Clause, attached hereto as Exhibit C and HUD Form 5370-C (10/2006), attached hereto as Exhibit D. In the event there is a conflict between this Contract and the HUD requirements set forth in Exhibits C and D, the HUD requirements shall prevail.

**9. INDEMNIFICATION**

Attorney shall defend, hold harmless and indemnify OHA and its commissioners, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability, including attorneys' fees, arising out of or connected with Attorney's performance of this Contract and any of Attorney's operations or activities related to this Contract, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified or held harmless.

**10. INDEPENDENT CONTRACTOR**

Attorney hereby declares that it is engaged in an independent business and agrees to perform its services as an independent contractor and not as the agent or employee of OHA. Attorney has and hereby retains the right to exercise full control and supervision of the services and work to be provided under this Contract and full control over the employment, direction, compensation and discharge of all persons assisting it in the performance of the services and work hereunder. Attorney agrees to be solely responsible for all matters relating to payment of employees, including, but not limited to, compliance with all federal, state and local payroll tax and withholding requirements, workers' compensation requirements and all regulations governing such matters. Attorney agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of the Contract.

**11. INSURANCE**

Attorney must comply with OHA's "Insurance Requirements for Consultants" attached hereto as Exhibit E.

**12. DISCLAIMER OF GUARANTY**

Although Attorney may offer an opinion about possible results regarding any specific matter handled by Attorney, Attorney cannot guarantee any particular result. OHA acknowledges that Attorney makes no promises about the outcome of any specific matter and any opinion offered by Attorney in the future will not constitute a guaranty.

**13. CONFLICTS OF INTEREST**

Pursuant to the State Bar Act, California Business and Professions Code Section 6000 et sequitur, and the California State Bar Rules of Professional Conduct, the attorney/law firm must disclose any conflicts of interest which would prevent it from representing OHA, or which might prevent it from representing OHA without OHA's informed written consent. At this time Attorney is not aware of any relationship with any other party interested in the subject matter of Attorney's services for OHA under this Agreement. As long as Attorney's services for OHA continue under this Agreement, Attorney will not agree to provide legal services for any such party without OHA's prior written and informed consent.

**14. NONDISCRIMINATION**

There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the performance of this Contract. Attorney will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status). Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations to clients or the general public.

**15. TERMINATION**

OHA may, by written notice, at any time prior to the completion of the term, terminate this Contract for any reason, including but not limited to, convenience of OHA, default by the Attorney, or circumstances beyond the control of the Attorney. Upon giving OHA reasonable written notice, Attorney will have the right

to withdraw as counsel for any reason permitted by the applicable rules of professional conduct, including failure to comply with the provisions of this agreement. In the event of any termination, OHA shall compensate the Attorney for work appropriately completed as of the date of the termination notice or the date of termination specified in and directed by such notice. Upon payment of the amount due, OHA shall be under no further obligation to the Attorney, financial or otherwise.

**16. MISCELLANEOUS PROVISIONS**

Notices. All notices, demands, consents or approvals required under this Contract shall be in writing and shall be deemed given when delivered personally or by facsimile transmission or three (3) business days after being deposited in the U.S. Mail, first class postage prepaid, return receipt requested, addressed as follows:

If to OHA:                   Housing Authority of the City of Oakland  
                                  1619 Harrison Street  
                                  Oakland, CA 94612  
                                  Attn: \_\_\_\_\_

If to Attorney: \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_

or to such other addresses as the parties may designate by notice as set forth above.

- A. Successors and Assigns. This Contract shall be binding upon and inure to the benefit of the successors and assigns of OHA and Attorney. Where the term "Attorney" or "OHA" is used in this Contract, it shall mean and include their respective successors and assigns; provided, however, that OHA shall have no obligation under this Contract to, nor shall any benefit of this Contract accrue to, any unapproved successor or assign of Attorney where OHA approval of a successor or assign is required by this Contract.
  
- B. Modification, Waiver and Amendment. Any modification, waiver or amendment of any of the provisions of this Contract must be in writing and signed by both OHA and Attorney.



- C. Entire Contract. This Contract represents the complete agreement between the parties as to the matters described herein, and there are no oral understandings between Attorney and OHA affecting this Contract not set forth herein. This Contract supersedes all previous negotiations, arrangements, agreements and understandings between Attorney and OHA with respect to the subject matter hereof.
  
- D. Severability. If any provision of this Contract shall be determined to be illegal or unenforceable, such determination shall not affect any other provision and all such other provisions shall remain in full force and effect.
  
- E. Governing Law. This Contract shall be governed by the laws of the State of California. It is the responsibility of Attorney to be informed of local, state and federal laws and requirements applicable to this Contract and to perform all work in compliance with those laws and requirements.
  
- F. Headings. Titles of parts or sections of this Contract are inserted for convenience only and shall be disregarded in construing or interpreting its provisions.
  
- G. Attorneys' Fees. In any action or proceeding arising out of the interpretation of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees and costs.
  
- I. Alternative Dispute Resolution. In the event of a dispute between the parties regarding the interpretation of this Contract, the parties may agree to mediation or another form of alternative dispute resolution.
  
- J. Authority. The undersigned represents and warrants that he or she has full power and authority to enter into this Contract and to bind the Attorney in accordance with its terms.
  
- K. Designated Representative. The initial designated representative for OHA for this Contract is \_\_\_\_\_. The initial Attorney designated representative for this Contract is \_\_\_\_\_.

IN WITNESS WHEREOF OHA and Attorney have executed this Contract as of the date first above written.

By: \_\_\_\_\_

\_\_\_\_\_  
Federal Tax Identification No.

HOUSING AUTHORITY OF THE CITY OF  
OAKLAND, a public body, corporate and politic

By: \_\_\_\_\_  
Eric Johnson, Executive Director

**SAMPLE**

**EXHIBIT A  
SCOPE OF SERVICES**

**[Attach a description of the services to be provided]**

**SAMPLE**

**EXHIBIT B  
BILLING RATES**

***ATTORNEYS AND RATE SCHEDULE***

**[Attach list with agreed upon rate schedule, including  
hourly rates for attorneys and paralegals, and reimbursable expenses]**

## **SAMPLE**

### **EXHIBIT C**

#### **SECTION 3 CLAUSE**

##### **Section 3 Clause (12 U.S.C. 1701u) (24 CFR Part 135)**

A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the U.S. Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the Section 3 covered project.

B. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of the Department of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department of Housing and Urban Development issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The Attorney will send to each labor organization or representative or workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The Attorney will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subAttorney is in violation of regulations issued by the Secretary of the Department of Housing and Urban Development, 24 CFR Part 15. The Attorney will not subcontract with any subAttorney where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subAttorney has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department of Housing and Urban Development issued thereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided under this Contract and shall be binding upon Contactor, its successors and assigns. Failure to fulfill these requirements shall subject the Attorney, its subAttorneys, successors and assigns to those sanctions specified by 24 CFR Part 135.

**SAMPLE**

**EXHIBIT D**

**HUD Form 5370-C (10/2006)**

EXHIBIT E  
INSURANCE REQUIREMENTS

***INSURANCE REQUIREMENTS FOR CONSULTANTS***

Consultant shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

*Minimum Scope of Insurance*

Coverage shall be as least as board as:

5. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
6. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
7. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
8. Errors and Omissions or Professional Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

***Minimum Limits of Insurance***

Consultant shall maintain limits no less than:

1. General Liability:                   \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either (Including operations, products and completed operations, as applicable.) the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:               \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:   \$1,000,000 per accident for bodily injury and property damage.
4. Errors and Omissions Liability:    \$1,000,000 per occurrence.
5. Professional Liability Insurance:   \$1,000,000 per occurrence.

***Deductible and Self-Insured Retentions***

## SAMPLE

Any deductibles or self-insured retentions must be declared to and approved by the Authority. At the option of the Authority, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Authority guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### ***Other Insurance Provisions***

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions.

6. The Authority, its commissioners, members, officers, agents, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.
7. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the Authority, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Authority, its commissioners, members, officers, agents, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
8. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after (30) days' prior written notice by certified mail, returned receipt requested, has been given to the Authority.
9. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Authority, its commissioners, members, officers, agents, employees and volunteers.
10. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

Workers' Compensation and Employers Liability Coverage. Insurer shall agree to waive all rights of subrogation against the Authority and its respective commissioners, members, officers, agents and employees for losses arising from work performed by Contractor or for the Authority.

Claims Made Coverage. If General Liability and/or Errors and Omissions coverage are written on a claims-made form:

5. The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.
6. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
7. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the



## **SAMPLE**

Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

8. A Copy of the claims reporting requirements must be submitted to the Authority for review.

Subcontractors. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein.

### *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI, unless otherwise acceptable to the Authority. Exception may be made for the State Compensation Insurance Fund when not specially rated.

### *Verification of Coverage*

Consultant shall furnish the Authority with certificates of insurance and with original endorsements evidencing coverage required by this clause. All certificates and endorsements are to be received and approved by the Authority before work commences. The Authority reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

# **VENDOR PROTESTS AND CLAIMS PROCEDURES**

(As extracted and revised  
from Oakland Housing Authority  
Contracting and Purchasing Procedures)

## SECTION 1.19 VENDOR PROTESTS AND CLAIMS PROCEDURES

The following are the definitions of terms used in this section.

### **Definitions:**

*OHA:* The abbreviation for the Housing Authority of the City of Oakland, California.

### *Contracting*

*Officer:* The Executive Director of OHA or the person designated by the Executive Director in writing.

*Vendor.* The person or firm that is involved in bidding, proposing, or quoting on an OHA material or service requirement, or has contracted with OHA to provide material or perform a service, or a person who has an interest in such matters.

*Claim:* The assertion of facts which serves as the basis for a demand of payment, reimbursement, or compensation believed by the vendor to be due the vendor. The claim must be submitted in writing, by the affected vendor, on the "Notice of Protest or Claim" form (MMO9501) furnished by OHA (copy attached).

*Protest:* A written complaint about, or an objection to, an administrative action or decision by OHA. The protest must be submitted, including any and all facts on which it is based, by the affected vendor, on the "Notice of Protest or Claim" form (MMO-9501) provided by OHA (copy attached).

### *Response to*

*Solicitation:* The vendor's written bid, quotation or proposal submitted in response to OHA's call for bids, quotations or request for proposals.

### **Who May Submit A Protest or Claim:**

Any person as defined above in "Vendor" may submit a protest or claim.

Vendor protests, claims, or disputes shall be resolved using the following procedures:

**A. Vendor protests prior to bid, quote or proposal opening:**

1. Vendor must submit a written notice of protest to OHA's Contracting Officer eight or more calendar days prior to the date set for the bid, proposal, or quotation opening.
2. Immediately upon receipt of the vendor's notice, the Contracting Officer shall date-stamp the notice and send a letter to the vendor acknowledging receipt of the notice. The Oakland Housing Authority acknowledgement shall indicate if the notice was filed within if required time period. A late notice is not eligible for consideration under this procedure. Any protest received after eight days prior to the date set for the bid, proposal, or quotation opening may be rejected without further consideration or may be considered under paragraph B below at the direction of the Contracting Officer.
3. Contracting Officer shall review the solicitation record to ensure the information provided by the protesting vendor is accurate. Based on a review of the vendor's protest and other relevant information, the Contracting Officer shall prepare a "Finding of Fact."
4. Based upon the "Finding of Fact," the Contracting Officer may elect to:
  - a. Amend the Invitation to Bid by addendum to all prospective vendors. Addendum is to be mailed by registered mail, four or more days prior to the date of scheduled bid opening.
  - b. Terminate the current Invitation to Bid, Quote, or Request for Proposal.
  - c. Reject the claim in writing, detailing reason(s) for the rejection.

**B. Protests after the bid, quote, or proposal opening, but prior to award of contract:**

1. Vendor must submit a written notice of protest to the Authority's Contracting Officer within three calendar days of the bid opening date.
2. Immediately upon receipt of the vendor's notice, the Contracting Officer shall date-stamp the notice and send a letter to the vendor acknowledging receipt of the notice. The Oakland Housing Authority acknowledgement shall indicate if the notice was filed within the required time period. A late notice is not eligible for consideration under this procedure.
3. The vendor's protest, along with the solicitation's tabulation sheet, scope of work, copies of all responses received, and any other relevant documents shall be provided to the Contracting Officer. The Contracting Officer shall review the vendor's protest and the circumstances and prepare a "Finding of Fact."

4. Based upon the "Finding of Fact;" the Contracting Officer may take any of (but is not limited to) the following actions:
  - a. Allow the vendor to withdraw the vendor's response to the solicitation.
  - b. Reject one or more vendor(s) response(s) to the solicitation for failing to be complete, lacking the required guarantee, or failing to conform to the solicitation's instructions.
  - c. Reject all of the responses to the solicitation.
  - d. Disqualify one or more vendor (s) as non-responsible and therefore ineligible for an award of contract.

Note: If the dollar amount of the lowest responsible response to the solicitation is such that the Board of Commissioners must approve the award of the contract, the Contracting Officer shall make a recommendation of action to the Board ratifying this finding (a-d above).

**C. Protests or claims after the award of contract (to be utilized in the absence of contractual language governing protests or claims):**

1. The vendor must, submit a written notice of protest or claim to OHA's Contracting Officer within seven calendar days. The time period shall start the day immediately following the date of the incident on which the notice is based.
2. Immediately upon receipt of the vendor's notice, the Contracting Officer shall date-stamp the notice and send a letter to the vendor acknowledging receipt of the notice. The Oakland Housing Authority acknowledgement shall indicate if the notice was filed within the required time period. A late notice is not eligible for consideration under this procedure.
3. The Contracting Officer, with reasonable promptness (after obtaining the approval of HUD, if required), shall render a written decision to the vendor. Unless the vendor, within seven calendar days after the receipt of the decision, notifies the Contracting Officer in writing that it takes exception to such decision, the decision shall be final and conclusive.
4. The Contracting Officer's decision shall be final unless the vendor has accomplished all of the following:
  - a. Given the notice of protest or claim within the proper time period, and
  - b. Signed a final release of all claims, other than those unsettled claims listed on the final release with their separately stated amounts, and
  - c. Brought suit against OHA (not later than one year after final payment, or in the absence of a final payment, within one year after a written request by OHA to the vendor to submit a final invoice or release) for a disposition of the protest or claim by a court of appropriate jurisdiction.

**CONTRACTING & PURCHASING PROCEDURES**

5. Whether or not the vendor presents a protest or claim to the Contracting Officer or takes exception to a decision of the Contracting Officer, the vendor, unless directed otherwise by the Contracting Officer, shall proceed with the work as directed.

**D. OHA record requirement:**

1. OHA shall maintain a complete and detailed record of all protests and claims. The record shall include all pertinent correspondence, the written or recorded minutes of any meetings with the vendors making the protests or claims, and any information used in determining OHA's actions in the disposition of protests or claims.

**OAKLAND HOUSING AUTHORITY**

**NOTICE OF PROTEST OR CLAIM**

CLAIMANT: \_\_\_\_\_ DATE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

AGENT FILING: \_\_\_\_\_

PHONE: \_\_\_\_\_

Purchase Order No.:

Invoice No.:

Bid No.:

REASON FOR CLAIM OR PROTEST (ATTACH COPIES OF DETAIL DOCUMENTS IF ANY):

(OHA USE ONLY)

NOTIFICATION: \_\_\_\_\_

DATE RECEIVED STAMP

CONTRACTING OFFICER: \_\_\_\_\_

FILING DATE: \_\_\_\_\_

COMMENTS: \_\_\_\_\_