



Oakland Housing  
Authority

## **REQUEST FOR PROPOSALS**

**RFP #21-018**  
**Consultants for**  
**Land Use and Zoning, Choice Neighborhood**  
**Initiatives, Affordable Housing Project**  
**Management, and Affordable Housing**  
**Financial Consulting**

<b>RFP Issued:</b>	August 10, 2021
<b>Questions Due:</b>	August 24, 2021
<b>Addendum Issued:</b> <i>(if applicable)</i>	August 31, 2021
<b>Proposal Due:</b>	September 9, 2021

**Oakland Housing Authority (OHA)**  
**Contract Compliance & General Services (CCGS) Department**  
**1619 Harrison Street**  
**Oakland, CA 94612**  
**e-mail: [CCGS@oakha.org](mailto:CCGS@oakha.org)**

**Contact person for the above RFP:**  
**Jeanne Smith: 510-587-2123**

# REQUEST FOR PROPOSALS RFP # 21-018

## TABLE OF CONTENTS

<b>1. General Information .....</b>	<b>3</b>
1.1 RFP Introduction .....	3
1.2 Oakland Housing Authority Reservation of Rights .....	4
1.3 Oakland Housing Authority Background and Information .....	4
<b>2. Minimum Requirements .....</b>	<b>4</b>
<b>3. Scope of Work.....</b>	<b>5</b>
3.1 Description of Services .....	5
<b>4. Proposal Submission Requirements .....</b>	<b>8</b>
4.1 Response Format .....	9
A. Cover Letter .....	9
B. Firm's Qualifications .....	9
C. Project Approach .....	9
D. Examples of Previous Work .....	9
E. Staffing and Project Organization .....	9
F. References.....	10
G. Proposed Rates.....	10
4.2 Required Forms/Certifications .....	10
A. Proposed Cost Form.....	10
B. Experience Table.....	10
C. Profile and Certification Form .....	10
D. HUD 5369-C Form.....	10
E. Section 3 Business Certification and Action Plan .....	10
F. Addendum Acknowledgment Form .....	10
<b>5. Selection Process .....</b>	<b>11</b>
5.1 RFP Timeline .....	11
5.2 Questions/Answers .....	11
5.3 Response Due Date.....	12
5.4 Evaluation Criteria.....	12
5.5 Selection Process .....	13
<b>6. Contract Requirements .....</b>	<b>15</b>
6.1 Contractor Requirements .....	15
6.2 Insurance Requirements.....	15
6.3 Contract Award .....	15
6.4 Contract Conditions .....	16
6.5 Contract Terms .....	17
6.6 Contractor's Breach .....	17
6.7 Remedies of Breach .....	17

Documents (in the order of the RFP package)		MUST be submitted with Proposal
	PROPOSAL SUBMISSION REQUIREMENTS (in Section 4 of RFP)	
	<b>1. Response Format</b> A. Cover Letter B. Firm's Qualifications C. Project Approach D. Examples of Previous Work E. Staffing and Project Organization F. References G. Proposed Rates <b>2. Required Forms/Certifications</b> A. Proposed Cost Form (Attachment A) B. Experience Table (Attachment B) C. Profile and Certification Form (Attachment C) D. HUD-5369-A Form (Attachment D) E. Section 3 Business Certification and Action Plan (Attachment H) F. Sample Addendum Acknowledgement Form (Attachment I - if applicable)	✓
	ATTACHMENTS – EXHIBITS/ FORMS/ DOCUMENTS	
A.	Proposed Cost Form	✓
B.	Experience Table	✓
	Profile and Certification Form	✓
D.	HUD 5369-A, Representations, Certifications, and Other Statements of Bidders Instructions to Offerors, Non-Construction	✓
E.	HUD 5369-B, Instructions to Offerors, Non-Construction	
F.	HUD 5370 C, General Conditions for Non-Construction Contracts –Section I	
G.	Oakland Housing Authority Economic Opportunities Policy	
H.	Contractor's Summary Guide to Section 3 Compliance with Section 3 Business Certification and Action Plan	✓
I.	Addendum Acknowledgement form (if applicable)	✓
J.	OHA Insurance Requirements	
K.	OHA Sample On Call Consultants' Services Contract	
L.	Vendor Protests And Claims Procedures	

## 1. **GENERAL INFORMATION**

### 1.1 **RFP Introduction**

The Oakland Housing Authority (the “Authority” or “OHA”) is soliciting qualifications for an On-call Consultant (“Consultant”) with specialized consulting firms to provide consulting services on an as-needed basis in order to support a variety of affordable housing planning and development activities. They are:

- Land Use and Zoning Analyst
- Choice Neighborhoods Initiatives Planning Consultant
- Affordable Housing Project Management Consultant
- Affordable Housing Financial Consultant

The On-call Consultant will be asked to provide consulting services across the Authority and by Authority Affiliates, but are expected to be most frequently utilized by the Office of Real Estate Development (ORED). The selection of Consultants will allow the Authority and its Affiliates to quickly contract with one or more of the qualified Consultants whose skill sets, expertise and availability are best suited to the specific task or project. Over the term of these on-call contracts, the Authority expects that a variety of assignments will be undertaken.

- Respondents may respond to this Request for Proposals (“RFP”) individually or as part of a team and may respond to one or multiple Specializations.
- Qualified Respondents will be awarded on-call contracts, and will be notified of future short-term consulting services that are relevant to their expertise and experience and that provide the best value to OHA for that particular task or project.
- OHA will enter into contracts with one or more responsive, responsible firms based on qualifications, professional capability, best value and availability. The scope of work of the contracts will be general and once a need for services arises, a task order will be created with a specific scope. The task order will be awarded based on which consultant offers the most applicable skillset and best value to OHA for the specific scope of services, as well as availability.

In keeping with its mandate to provide efficient and effective services, the Authority is soliciting responses from individuals or firms to provide services as described under Section 3 - Scope of Work. All responses submitted for 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 Oakland Housing Authority project, you may go to the Authority’s website [www.oakha.org](http://www.oakha.org). Select “Business Opportunities”, “Procurement”, “Current Bid Openings” and “Active Bids” or visit Housing Agency Marketplace through the following link:

[https://ha.economicengine.com/requests.html?company\\_id=50863](https://ha.economicengine.com/requests.html?company_id=50863).

**Respondents MUST register with Housing Agency Marketplace in order to submit a proposal.**

## **1.2 Oakland Housing Authority Reservation of Rights**

- The Authority reserves the right to reject any or all responses, to waive any informality in the RFP process, or to terminate the RFP process at any time, if deemed by the Authority to be in its best interests.
- The Authority reserves the right not to award a contract pursuant to this RFP.
- The Authority reserves the right to terminate a contract awarded pursuant to this RFP, at any time, for its convenience.
- The Authority reserves the right to determine the days, hours, and locations that the successful Respondent(s) shall provide the services called for in this RFP.
- The Authority reserves the right to negotiate the fees proposed by the Respondent entity.
- The Authority reserves the right to reject and not consider any response that does not meet the requirements of this RFP, including but not necessarily limited to incomplete responses and/or responses offering alternate or non-requested services.
- The Authority shall reserve the right at any time during the RFP or contract process to prohibit any further participation by a Respondent or reject any response submitted that does not conform to any of the requirements detailed herein.
- The Authority is subject to the disclosure requirements of the California Public Records Act. This act will apply to all submitted responses to the Authority.

## **1.3 Oakland Housing Authority 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.

The Authority is federally funded and regulated primarily under the U.S. Housing Act of 1937, as amended. The majority of our funding is governed by the U.S. Department of Housing and Urban Development (HUD) regulations. The Authority was selected to be a “Moving to Work” (MTW) housing authority by HUD and enter into an MTW agreement in 2004. The agreement has since been amended extending the MTW agreement to June 30, 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 employees in four major divisions: The Office of the Executive Director, including the Departments of Human Resources and Police Services, the Office of Real Estate Development, the Office of Finance and Program Administration, and the Office of Property Operations.

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, 1540 Webster Street, 1180 25<sup>th</sup> Avenue, 935 Union Street, and 1327 65<sup>th</sup> Avenue.

## **2. MINIMUM REQUIREMENTS**

To be deemed minimally qualified to perform the selected scope of services, the Respondent must have completed three (3) directly comparable contracts in the most recent seven (7) years as

indicated in Exhibit B, Experience Table. In addition, a Respondent must not be listed as an excluded entity on the U.S. Government's System for Award Management.

### 3. **SCOPE OF WORK**

#### 3.1 **Description of Services**

The purpose of this solicitation is to qualify On Call Consultants to contract with OHA to provide staff augmentation, consulting/advisory services and/or other related services on behalf of OHA at a fixed hourly rate for one or more of the Specializations listed below on an "as-needed" basis pursuant to the issuance of task orders during the term of the contract. The selected consulting firm(s) shall furnish all expertise, labor and resources in accordance with the requirements of OHA and shall provide complete services necessary for the purchase order(s) issued throughout the duration of the contract.

Firms are encouraged to limit their submission for the Specialization(s) where they have a proven record of accomplishment. It is not necessary for firms to submit a proposal addressing all Specializations as described in this Section 3.1 however, firms are welcome to do so. If firms are responding to more than one Specialization, they should submit a separate section in their proposal for each Specialization.


More than one firm may be determined to be qualified for any individual Specialization. The Authority may or may not utilize these services or a portion of the services during the term of the contract. OHA is under no obligation to fully expend the contract amount with the qualified firm(s). OHA reserves the right to select more than one (1) firm at its own discretion for any task.



At its sole discretion, OHA reserves the right to issue a task order to any firm qualified for a Specialization based upon OHA's need for services. Qualifying under a Specialization does not guarantee that a task order will be issued during the contract period. Firm(s) will only provide services under the Specialization of the awarded contract.

The awarded On-call Consultant will be responsible for any or all of the following general tasks. Specific tasks will be determined by OHA on an as-needed basis.

Please check the box indicating which Specialization(s) your firm would like to be considered for and attach pages 6-8 to the Cover Letter. Respondents may submit qualifications for consideration for multiple Specializations detailed in the tables below.

<b>Specialization</b>	<b>General Scope of Services</b>	<b>Check box for Consideration</b>
Land Use and Zoning Analyst	<p>Subject expert in land use and zoning analysis to assist with identifying prospective sites and analyzing constraints and development potential.</p> <ul style="list-style-type: none"> <li>Analyze sites for development potential based on allowed zoning and General Plan guidelines;</li> <li>Prepare massing and unit mix studies;</li> <li>Provide advisory services related to entitlements and zoning approvals; and</li> <li>Provide advisory services related to community engagement.</li> </ul>	<div style="border: 1px solid black; width: 50px; height: 50px; margin: 0 auto;"></div>

<p>Choice Neighborhood Initiatives Planning Consultant</p>	<p>Consultant with direct and significant experience with the US Department of Housing and Urban Development's (HUD) Choice Neighborhood Initiatives (CNI) Program.</p> <ul style="list-style-type: none"> <li>• Provide technical assistance related to strategic planning and the potential submittal of an application to the US Department of HUD for a Choice Neighborhood Initiatives (CNI) award;</li> <li>• Research relevant neighborhoods and advise the Authority on which neighborhood is more competitive under the NOFA scoring criteria;</li> <li>• Raise and resolve any issues or concerns regarding the application and offer innovative program ideas;</li> <li>• Develop a specific timeline and milestones for the entire CNI planning process, including conformance with the HUD Grant Agreement and other HUD documents;</li> <li>• Monitor the progress of the planning process to assure adherence with schedule and milestones;</li> <li>• Manage the data compilation, analysis and evaluation process;</li> <li>• Develop a community engagement process involving community residents, anchor institutions, governmental agencies, etc.;</li> <li>• Develop and monitor the planning budget;</li> <li>• Assist in the preparation of HUD reports and other applicable documents;</li> <li>• Assist with the preparation and submission of the Choice Neighborhoods Planning and Action Grant application;</li> <li>• Develop a Choice Neighborhoods Transformation Plan for HUD's approval; and</li> <li>• Generally assume a leadership role in all aspects of the preparation of the Transformation Plan, bringing together various parties, continuing the work already completed by others and assuring a comprehensive, inclusionary, transparent and effective planning process resulting in a written Transformation Plan that meets HUD requirements and the Authority and community expectations.</li> </ul>	
--	---	---

Affordable Housing Project Management Consultant	<p>Project Management Consultant with direct experience and a proven record of accomplishment overseeing and managing all phases of affordable housing development.</p> <ul style="list-style-type: none"> <li>• Provide advisory services related to the assemblage and acquisition of parcels for a prospective project;</li> <li>• Oversee and manage the entitlements process including community outreach and engagement;</li> <li>• Assist with the procurement of the architectural and engineering consultants;</li> <li>• Oversee and manage the architectural and engineering consulting team;</li> <li>• Assist with the procurement of, and oversee and manage all project consultants such as the relocation consultant, construction manager, environmental consultants, and general contractor;</li> <li>• Identify and assemble all required project financing;</li> <li>• Manage the project budgets;</li> <li>• Oversee and manage all environmental reviews and clearances;</li> <li>• Manage project schedule and ensure that all financing and closing deadlines are achieved;</li> <li>• Oversee construction including review and process all contractor's pay applications in collaboration with the architect and Authority's construction consultant(s);</li> <li>• Prepare memoranda and compile documentation to transition project from development to operations and asset management; and</li> <li>• Manage conversion of construction financing to permanent financing.</li> </ul>	
Affordable Housing Financial Consultant	<p>Subject expert in affordable housing financial feasibility, underwriting, and strategic planning. Consultant shall assist the Authority's real estate development team to evaluate and underwrite new third party proposals as well as structure new financing for prospective OHA direct developments.</p> <ul style="list-style-type: none"> <li>• Provide affordable housing project financial feasibility and financial planning services based on extensive working knowledge of the following financing programs: <ul style="list-style-type: none"> <li>• 9% and 4% low-income housing tax credits</li> <li>• HUD Section 8 Project Based Voucher (PBV), Section 18, Rental Assistance Demonstration (RAD), HUD Mixed Finance Programs, and other FHA related programs</li> <li>• California Veterans Housing Homeless Program (VHHP)</li> <li>• California Project HomeKey</li> </ul> </li> </ul>	



	<ul style="list-style-type: none"> <li>• California Tax-Exempt Bonds</li> <li>• California Multifamily Housing Program (MHP)</li> <li>• California Affordable Housing and Sustainable Communities Program (AHSC)</li> <li>• California Mental Health Services Act (MHSA)</li> <li>• California Housing Finance Agency (CalHFA) programs</li> <li>• California State HOME</li> <li>• California No Place Like Home</li> <li>• Provide financial advisory services related to structuring prospective new projects which may include public housing units, affordable and market-rate rental units, and affordable and market-rate ownership units;</li> <li>• Prepare and/or critique all project operating pro formas and cash flow projections;</li> <li>• Provide strategic advice to maximize project scoring under TCAC, CDLAC, CA HCD, and other competitive financing programs;</li> <li>• Evaluate the overall soundness and sustainability of the financing strategy;</li> <li>• Ensure the proposed financing strategy and structure, especially the public housing and Section 8 components, are in full compliance with all applicable regulations;</li> <li>• Provide group and individual underwriting training to staff to increase their capacity to underwrite prospective new project financing proposals from third party developers;</li> <li>• Provide project underwriting, as needed; and</li> <li>• Provide affordable housing financial education, training and support to Authority staff, as requested.</li> </ul>	
--	--	--

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

To properly evaluate each response received by the Authority, all responses submitted for this RFP must be formatted in accordance with the “Response 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.

The Authority shall not be liable for any expense incurred in relation to the preparation or submittal of responses. Expenses include, but are not limited to, expenses preparing the response or related information in this RFP; negotiations with the Authority on any matter related to the response; and costs associated with interviews, meetings, travel or presentations. Additionally, the Authority shall not be liable for expenses incurred as a result of the Authority’s rejection of any response.

The Respondent(s) selected must be fully qualified to perform the services described above, must possess the appropriate business license, and must comply with all contract requirements.

## 4.1 Response Format

To provide objective criteria that can be used in determining various Respondents' abilities, please address the following items in the same order as presented below.

Submissions must clearly address all of the requirements outlined in this Section 4.1. A company qualification brochure may be added as an attachment at the end of the Proposal but will not be considered in lieu of narrative responses to items A – G below.

If the Respondent is proposing to provide services in more than one Specialization, as indicated in Section 3, please submit qualifications requested in Items B – F as a separate collated assemblage for each Specialization. For example, if submitting qualifications for two Specializations please provide items B – F for the first Specialization and then provide items B – F for the second Specialization.

The Respondent may include any other general information that the Respondent believes is appropriate to assist the Authority in its evaluation.

**A. Cover Letter** – Include any introductory remarks, the RFP number, the name of the lead firm submitting the response (if applicable), contact information for the primary contact person during this RFP process, when the company was organized, the principal office from which services will be offered, alternative company names, and principal areas of practice.

Attach pages 6-8 from Section 3.1 indicating which Specialization(s) the Respondent is submitting qualifications for consideration.

**B. Firm's Qualifications** – Provide a narrative overview and history describing the Respondent's experience and expertise providing a similar scope of work as the proposed General Scope of Services described in Section 3.1. Provide as much applicable detail as necessary to demonstrate the Respondent's qualifications to provide the proposed General Scope of Services for the applicable Specialization. Any experience with public agency clients should be highlighted. In addition, complete the Experience Table in Exhibit B detailing all similar contracts in the most recent 10 years.

If the Respondent is proposing to provide services in more than one Specialization, please submit a separate narrative and Experience Table for each Specialization.

**C. Project Approach** – Provide a narrative that discusses the Respondent's approach and process of initiating and completing the work.

If the Respondent is proposing to provide services in more than one Specialization as indicated in Section 3, please submit a separate narrative for each Specialization.

**D. Examples of Previous Work** – Provide three (3) or more comparable work product examples completed within the past seven (7) years to those indicated in Section 3. The examples shall also include a brief description and scope of the service(s) and the dates the services were provided.

If the Respondent is proposing to provide services in more than one Specialization, please submit three (3) comparable work product examples for each Specialization indicated in Section 3.

**E. Staffing** – Provide the names of each proposed team member and a description of his/her role and responsibilities. Include resumes for each team member and sub-consultant, if any. All assigned staff must have a minimum of five (5) years of applicable experience in the selected

Specialization. Include any additional, certifications, accreditation and/or licenses, if applicable.

If the Respondent is proposing to provide services in more than one Specialization, please submit proposed staffing for each Specialization indicated in Section 3.

**F. References** – Provide three (3) references (including names, email and telephone number) that corresponds with the work products provided in Section 4.1.D, Examples of Previous Work.

If the Respondent is proposing to provide services in more than one Specialization, please submit three (3) references for each Specialization. By submitting a response to this RFP, each Respondent agrees that the Authority may contact any company, person, or client to whom references are made within the Respondent's proposal.

**G. Proposed Rates** – Provide hourly rates for all staff or sub-consultants proposed to participate in the work on Attachment A, Proposed Cost Form, including administrative fees and any additional chargeable expenses. Include any rate increases for years two (2) through five (5).

## **4.2 Required Forms/Certifications**

The following forms must be submitted with your proposal in the following order:

**A. Proposed Cost Form**

The form must be completed and signed (Attachment A).

**B. Experience Table**

The Experience Table must be completed (Attachment B).

**C. Profile and Certification Form**

The form *Profile and Certification Form* must be completed and signed (Attachment F).

**D. HUD-5369-C Form**

The HUD *Certifications and Representations of Offerors – Non-Construction Contracts* form must be completed and signed (Attachment H).

**E. Contractor's Summary Guide to Section 3 Compliance and Business Certification and Action Plan**

The *Section 3 Compliance and Business Certification and Action Plan* must be completed and signed. (Attachment I).

The Authority expects the selected On-call Consultant to make a good faith effort to comply with the Section 3 Policy. Refer to the attachment titled "*Section 3 Requirements – Oakland Housing Authority Economic Opportunities Policy*" in this RFP. Respondent 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 the Oakland Housing Authority public housing, and a certified statement that the firm will make a good effort to comply with the Section 3 policy. The Authority Project Manager and Contract Compliance staff will monitor On-call Consultant's compliance with Section 3 requirements.

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

All applicable *Addendum Acknowledgement Form(s)* must be submitted with the proposal (Attachment J).

## 5. SELECTION PROCESS

### 5.1 RFP Timeline

The following are proposed dates relating to this selection process:

August 10, 2021	RFP Issued
August 24, 2021	<b>Questions in writing via email, due by 10:00 AM PDT</b>
August 31, 2021	Responses to questions and Addendum issued and posted on OHA website and Housing Agency Marketplace(if necessary)
September 9, 2021	<b>Responses due by 10:00 AM PDT. Respondents MUST register with Housing Agency Marketplace in order to submit a proposal.</b>

### 5.2 Questions/Answers

All questions must be submitted in writing via E-mail no later than **10:00 AM PDT, August 24, 2021**. All questions will be answered in an addendum issued and posted on the Oakland Housing Authority website by **August 31, 2021 end of day**, if necessary. On the Oakland Housing Authority website [www.oakha.org](http://www.oakha.org). Select “Business Opportunities”, “Procurement”, “Current Bid Openings” and “Active Bids”.

No questions will be responded to after the question and answer period has expired.

Questions are to be submitted to **CCGS@oakha.org**

#### **Addendum**

CCGS will respond to all inquiries in writing, by addendum, and will release the information to all prospective Respondents. The addendum will be posted on the OHA Vendor Center website at [www.oakha.org](http://www.oakha.org). Select “Business Opportunities”, “Procurement”, “Current Bid Openings”, “Active Bids”, and select the desired bid #. The addendum will be posted to the Housing Agency Marketplace as well, if applicable, at the below link:

[https://ha.economicengine.com/requests.html?company\\_id=50863](https://ha.economicengine.com/requests.html?company_id=50863)

During the RFP solicitation process, CCGS will NOT conduct any *ex parte* conversations (substantive conversation —“substantive” meaning, any discussion or exchange between any Oakland Housing Authority staff and a prospective Respondent that does or may contain fundamental or relevant information regarding any portion of the RFP or solicitation process, when other prospective Respondents are not present) that may give one prospective Respondent an advantage over other prospective Respondents. This will not bar prospective Respondents from contacting CCGS; however, CCGS will limit communication with prospective Respondents to information already contained in the solicitation documents.

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

### 5.3 Response Due Date

Proposals must be submitted online via Economic Engine/Housing Agency Marketplace by **September 9, 2021 at 10 am** through the following link:

[https://ha.economicengine.com/requests.html?company\\_id=50863](https://ha.economicengine.com/requests.html?company_id=50863)

**Respondents MUST register with Economic Engine in order to submit proposals.** It may take time to upload proposals so please take that into consideration when deciding what time to start uploading your proposal. **Please make sure that your proposal has been successfully uploaded even if you receive a notice acknowledging your proposal.** If you have any technical issues with the site, please contact Larry Hancock at 1-866-526-0160.

#### **Submission Responsibilities**

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

### 5.4 Evaluation Criteria

The following criteria will be used to evaluate all responses.

Points will be assigned to each response for all weighted areas. The evaluation team will make a recommendation to the Authority's Board of Commissioners. Final approval will be made by the Board of Commissioners, if required.

**Total points possible: 100.**

**The minimum number of points to qualify as an On Call Consultant for each Specialization: 80 points.**

Respondent(s) that score above the competitive range of 80 in accordance with the stated evaluation criteria will be deemed as prequalified as an On Call Consultant. Respondents submitting qualifications for multiple Specializations will be evaluated and scored for each Specialization separately.

A description of the required Response Submission Format is detailed in Section 4.1, Response Format.

No.	Criteria	Points
1.	<b><u>Experience:</u></b> Respondents' depth and breadth of experience in providing comparable consulting services to those described in Section 3.1 for the selected Specialization(s) as evidenced by past performance	30
2.	<b><u>Qualifications of Staff:</u></b> Proposed staff's qualifications and relevant experience to provide professional services as evidenced by past performances for the selected Specialization(s). All assigned staff must have a minimum of five (5) years of experience in the selected Specialization.	25
3.	<b><u>Quality of Work Products:</u></b> Quality, professionalism, and presentation of submitted work products for the selected Specialization(s).  Respondents must submit three (3) or more comparable work product examples completed within the past seven (7) years.	20
4.	<b><u>Project Approach:</u></b> Strength of Respondent's approach and process to engaging in the work for the selected Specialization(s).	20
5.	<b><u>Proposed Cost:</u></b> Proposed compensation structure including hourly rates, administrative fees, and chargeable expenses and services.	5
	<b><u>Total</u></b>	<b>100</b>

Qualified Respondent(s) will be selected based on the above criteria.

## 5.5 Selection Process

The Authority will conduct the evaluation process. All responses will be reviewed for completeness and responsiveness. During the evaluation process, the Authority reserves the right to request clarification or additional information from individual Respondents and to request some or all Respondents make presentations to Authority staff.

Each response will be independently analyzed by members of an evaluation team. The evaluations team will analyze how the Respondent's qualifications, experience, and capabilities meet the Authority's needs. The Authority may require the Respondent to submit additional materials to supplement its proposal. The selection will be the sole responsibility of the Authority. The Authority reserves the right to reject any and all responses, and shall select On-call Consultants based on the most advantageous conditions for the Authority.

### A. Initial Evaluation for Responsiveness

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

**B. Evaluation Committee**

Internally, an evaluation packet will be prepared for each evaluator. The Authority anticipates that it will select a minimum of three people to serve on a committee to evaluate each of the responsive proposals submitted for this RFP.

**C. Restrictions**

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

PLEASE NOTE: No Respondent 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 Respondent 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 member is the only person at the Authority that the Respondents shall contact pertaining to this RFP. Failure to abide by this requirement may (and most likely will) cause such Respondent(s) to be eliminated from consideration for award.

**D. Evaluation**

The appointed evaluation committee shall evaluate the complete responses submitted and award points based on Section 5.4 - Evaluation Criteria.

The Authority will, at its discretion, contact one or more of the provided References for the Respondents deemed to be within the competitive range. Any negative References will be taken into consideration before proceeding with a final approval by the Board of Commissioners.

**E. Oral Interviews**

The Respondents that are determined to be the most qualified applicants may be invited for an interview. All applicants invited to participate in the oral interviews will be ranked after the interview process.

Upon final completion of the RFP evaluation process, the evaluation committee will forward the completed evaluations to the CCGS Contracting Officer.

**F. Selection of On-call Consultant(s)**

As a result of the RFP evaluation process, the Authority will award contracts and will place the Respondents who scored 80 points or more on a list of qualified On-call Consultants. As actual needs arise, OHA will create task orders with the specific scope. OHA will then select a consultant from the qualified list based on availability, relevance of skillset, and best value for the particular task.

The Authority will conduct negotiations with any of the On-Call Consultants, as needed, to reach a final agreement on a fair and reasonable price to perform the activities outlined in Section 3: Scope of Work.

No minimum or maximum amount of work will be guaranteed.

**1. 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 Respondents will receive, by e-mail, a letter of award or non-award.

**6. CONTRACT REQUIREMENTS**

**6.1 Contractor Requirements**

The On-call Consultant(s) selected must be fully qualified to perform the services described above.

In addition, as the work is funded with U.S. Department of Housing and Urban Development (HUD) funds, any required documents generated by the Respondent and/or the OHA must comply with all applicable HUD regulations specified in HUD-51915 Model Form of Agreement Between Owner and On-call Consultant. The Contractor must also comply with all Authority contract requirements.

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

**6.2 Insurance Requirements**

Prior to award, all successful Respondent(s) will be required to provide the proper license documents and insurance certificates. The selected Respondent(s) and sub-contractors will be required to comply with Oakland Housing Authority's insurance requirements attached hereto. (Attachment J)

**Indemnification**

The Contractor must expressly agree to defend, hold harmless and indemnify the Oakland Housing Authority, 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 Contractor's operations or performance under the resultant contract.

**Additional Insured Party**

As a condition of the contract, Contractor will be required to provide a valid certificate of insurance and to submit copies of the insurance certificates naming the Authority as an additional insured party. The insurance policies must provide a 30-day notice of cancellation and be primary to any other insurance carried by the Authority.

**6.3 Contract Award**

**A. Negotiations**

Once responses have been evaluated and ranked, the Authority may use the contract negotiation process to obtain the most highly qualified Respondent(s) at a fair and mutually agreed-to price. The proposed contract will include a Scope of Services and a Fee Schedule including an hourly rate schedule, administrative fees and expenses.

The Authority reserves the right to enter into discussions with any Consultant whose RFP submission 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 any responsible and responsive consultant within the competitive range without the need to repeat the formal solicitation process.



The Authority reserves the right to award without discussions.

**B. Meetings**

Once the contract(s) are awarded, the Consultant will meet with the Oakland Housing Authority 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 response, the Respondent is thereby agreeing to abide by all terms and conditions pertaining to this RFP as issued by the Authority, including the OHA Services Contract (Attachment K) unless amendments are authorized in writing by the Authority in an Addendum to this RFP prior to the submittal deadline.

Accordingly, the Authority 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 Authority pursuant to this RFP:

**A. Contract Form**

The Authority will not execute a contract on the successful Respondent's form. Contracts will only be executed on the OHA Services Contract (Attachment K). By submitting a response, the successful Respondent agrees to execute a contract on the Authority's form. Please note that the Authority reserves the right to amend this form, as the Authority deems necessary. However, the Authority will, during the RFP process and prior to the submittal deadline, consider any contract amendments that the Respondent wishes to include therein and submits in writing a request for the Authority to do so. **IF THE PROPOSED AMENDMENTS ARE NOT ACCEPTED BY THE AUTHORITY, THEN THE RESPONDENT MUST EXECUTE THE CONTRACT FORM AS IS.** Failure of the Authority to include such amendments does not give the successful Respondent the right to refuse to execute the Authority's contract form. It is the responsibility of each prospective Respondent to notify the Authority, in writing, prior to submitting a response, of any contract clause that he/she is not willing to include and abide by in the final executed contract. The Authority will consider and respond to such written correspondence, and if the prospective Respondent is not willing to abide by the Authority's decision, then that prospective Respondent shall be deemed ineligible to submit a response. ***Please note: Oakland Housing Authority 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 Authority shall retain the right to demand and receive a change in personnel assigned to the work if the Authority believes that such change is in the best interest of the Authority and the completion of the contracted work.

**C. Unauthorized Sub-Contracting Prohibited**

The successful Respondent(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 Oakland Housing Authority Contracting Officer. Any purported assignment of interest or delegation of duty, without the prior written consent of the Authority Contracting Officer shall be void and may result in the cancellation of the contract with

the Oakland Housing Authority, or may result in the full or partial forfeiture of funds paid to the successful Respondent as a result of the proposed contract; either as determined by the Contracting Officer.

## **6.5 Contract Terms**

The Authority intends to enter into a Contract with qualified Consultants for two years with the option to renew for three additional one-year terms. Contracts will be awarded to qualified Consultants who provide reasonable quotations and can complete the work in the required timeframe.

OHA will exercise its option to renew the Contract ninety (90) days before the Contract ends by renegotiating the price or by keeping the firm price of the original Contract, whichever is OHA's best interest.

## **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 the Authority and the Contractor. 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 Contractor has not taken the necessary corrective action, the Authority will send notification to the Contractor 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.

**ATTACHMENT A**  
**Proposed Cost Form**

**SPECIALTY AREAS**

- SPECIALIZATION (1) – LAND USE AND ZONING ANALYST
- SPECIALIZATION (2) – CHOICE NEIGHBORHOOD INITIATIVES PLANNING CONSULTANT
- SPECIALIZATION (3) – AFFORDABLE HOUSING PROJECT MANAGEMENT CONSULTANT
- SPECIALIZATION (4) – FINANCIAL CONSULTING

**Hourly Rates for the Initial Term (2 years) of the Contract**

<b>Title</b>	<b>Area 1</b>	<b>Area 2</b>	<b>Area 3</b>	<b>Area 4</b>	<b>Total Rates Across all Areas</b>	<b>Estimated Hours 100*</b>	<b>Total (Total Hourly rates x by 100 hours)</b>
Director/ Principal						<b>100</b>	
Senior Associate /Senior Project Mgr.						<b>100</b>	
Associate / Project Mgr.						<b>100</b>	
Analyst						<b>100</b>	
Administrative Support						<b>100</b>	
Travel Cost						<b>100</b>	
Misc. Fees**						<b>100</b>	
Grand Total: (Add all total columns)		\$: _____					

\*Estimated Hours are being used for comparison purposes only

\*\*Please identify Misc. Fees on a separate form and include with your Fee Schedule

### Hourly Rates for Option Year One (1) of the Contract

<b>Title</b>	<b>Area 1</b>	<b>Area 2</b>	<b>Area 3</b>	<b>Area 4</b>	<b>Total Rates Across all Areas</b>	<b>Estimated Hours 100*</b>	<b>Total (Total Hourly rates x by 100 hours)</b>
Director/ Principal						<b>100</b>	
Senior Associate /Senior Project Mgr.						<b>100</b>	
Associate / Project Mgr.						<b>100</b>	
Analyst						<b>100</b>	
Administrative Support						<b>100</b>	
Travel Cost						<b>100</b>	
Misc. Fees**						<b>100</b>	
Grand Total: (Add all total columns)		\$: _____					

### Hourly Rates for Option Year Two (2) of the Contract

<b>Title</b>	<b>Area 1</b>	<b>Area 2</b>	<b>Area 3</b>	<b>Area 4</b>	<b>Total Rates Across all Areas</b>	<b>Estimated Hours 100*</b>	<b>Total (Total Hourly rates x by 100 hours)</b>
Director/ Principal						<b>100</b>	
Senior Associate /Senior Project Mgr.						<b>100</b>	
Associate / Project Mgr.						<b>100</b>	
Analyst						<b>100</b>	
Administrative Support						<b>100</b>	
Travel Cost						<b>100</b>	
Misc. Fees**						<b>100</b>	
Grand Total: (Add all total columns)		\$: _____					

\*Estimated Hours are being used for comparison purposes only

\*\*Please identify Misc. Fees on a separate form and include with your Fee Schedule

### Hourly Rates for Option Year Three (3) of the Contract

Title	Area 1	Area 2	Area 3	Area 4	Total Rates Across all Areas	Estimated Hours 100*	Total (Total Hourly rates x by 100 hours)
Director/ Principal						100	
Senior Associate /Senior Project Mgr.						100	
Associate / Project Mgr.						100	
Analyst						100	
Administrative Support						100	
Travel Cost						100	
Misc. Fees**						100	
Grand Total: (Add all total columns)		\$: _____					

\*Estimated Hours are being used for comparison purposes only

\*\*Please identify Misc. Fees on a separate form and include with your Fee Schedule

**Respondent Name:**

\_\_\_\_\_

**Authorized Signature:**

\_\_\_\_\_

**Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Address:**

\_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**ATTACHMENT B**  
**On Call Consultant's Project Experience – Previous 10 Years**

**Applicable Specialization:** \_\_\_\_\_

<b>Project Name</b>	<b>Location</b>	<b>Owner Name</b>	<b>Scope of Work</b>	<b>Contract Start Date</b>	<b>Contract Completion Date</b>

Attachment C  
Profile and Certification Form

## PROFILE AND CERTIFICATION FORM (Page 1 of 3)

(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) Business Name as Listed on the California Secretary of State Website: \_\_\_\_\_

(10) California Secretary of State Entity Number: \_\_\_\_\_

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

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

\* The undersigned party submitting this bid hereby certifies that the firm can meet and comply with OHA's "Section 3 Requirements" attached hereto. (**See 'Section 3 Requirements Form and Action Plan'**)



## PROFILE AND CERTIFICATION FORM (Page 2 of 3)

(13) Vendor Diversity Outreach Requirements: The Authority requires vendors/contractors/proposers undertake good faith efforts to ensure that Minority Business Enterprises and Woman Business Enterprises are provided opportunities to contract with the Authority for the delivery of goods and services. The undersigned, as an authorized representative of the business identified herein, hereby declares that the following statements are, to the best of his/her/its knowledge, true and correct with respect to the efforts made in a "good-faith" attempt to comply with the Authority's outreach requirements and that said business will provide to the Authority evidence of the efforts described herein within three working days of such request.

a.) Written Notice

☐ Not less than \_\_\_\_\_ days prior to the submission of the bids/proposals, we provided written notice of our interest in bidding and requested assistance from organizations that provide assistance in the recruitment and placement of MBE/WBE and other business enterprises. **[NOTE: You may be requested to submit a list of organizations that provided such assistance.]**

☐ We **did not** provide such written notice.

b.) Advertisement

☐ Not less than \_\_\_\_\_ days prior to the submission of the bids/proposals, the undersigned party advertised for bids/proposals from interested MBE/WBE businesses in more than one daily or weekly newspaper, trade association publications, minority or trade oriented publications, trade journals, internet, social media and/or other media. **[Proof of advertisement must be attached.]**

☐ The undersigned party **did not** advertise for bids from MBE/WBE businesses.

c.) Participation

☐ The undersigned party directly solicited MBE/WBE businesses that have agreed to participate in this contract if awarded.

☐ The undersigned party **did not** obtain participation by MBE/WBE businesses.

(14) 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: \_\_\_\_\_

(15) 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.

**PROFILE AND CERTIFICATION FORM (Page 3 of 3)**

- (16) 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.

- (17) 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.
- (18) Indemnification Certification: The undersigned party submitting this bid hereby certifies that the firm expressly agrees to indemnify, defend, hold harmless and indemnify the Authority, and its respective commissioners, members, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising out of or connected with the performance of this Contract and any of Contractor's operations or activities related thereto, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified or held harmless.
- (19) 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. (Section 3 Information, Economic Opportunities Policy, and Labor Compliance standards may be found on our website at [www.oakha.org/ Business Opportunities/Section 3.](http://www.oakha.org/Business%20Opportunities/Section%203))
- (20) 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".
- (21) Verification Statement: The undersigned party 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

Attachment D

HUD 5369-A, Representations, Certifications, and Other Statements of Bidders  
Instructions to Offerors, Non-Construction

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

**Representations, Certifications,  
and Other Statements of Bidders**  
**Public and Indian Housing Programs**

# Representations, Certifications, and Other Statements of Bidders

## Public and Indian Housing Programs

### Table of Contents

Clause	Page
1. Certificate of Independent Price Determination	1
2. Contingent Fee Representation and Agreement	1
3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	1
4. Organizational Conflicts of Interest Certification	2
5. Bidder's Certification of Eligibility	2
6. Minimum Bid Acceptance Period	2
7. Small, Minority, Women-Owned Business Concern Representation	2
8. Indian-Owned Economic Enterprise and Indian Organization Representation	2
9. Certification of Eligibility Under the Davis-Bacon Act	3
10. Certification of Nonsegregated Facilities	3
11. Clean Air and Water Certification	3
12. Previous Participation Certificate	3
13. Bidder's Signature	3

### 1. Certificate of Independent Price Determination

#### (a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

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

(1) Is the person in the bidder'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's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder'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 deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[ ] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [ ] is, [ ] is not included with the bid.

### 2. Contingent Fee Representation and Agreement

#### (a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

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

(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.

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

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

### 3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to 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 on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to 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 on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

#### 4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,  
(b) Impair the bidder's objectivity in performing the contract work.  
[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

#### 5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

#### 6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

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

The bidder 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 business enterprise. "Women-owned business enterprise," as used in this provision, means a 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 business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled 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)

- |                        |                              |
|------------------------|------------------------------|
| [ ] Black Americans    | [ ] Asian Pacific Americans  |
| [ ] Hispanic Americans | [ ] Asian Indian Americans   |
| [ ] Native Americans   | [ ] Hasidic Jewish Americans |

#### 8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [ ] is, [ ] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [ ] is, [ ] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

**9. Certification of Eligibility Under the Davis-Bacon Act** (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

**10. Certification of Nonsegregated Facilities** (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

**Note:** The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

**11. Clean Air and Water Certification** (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [ ] is, [ ] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

**12. Previous Participation Certificate** (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [ ] is, [ ] is not included with the bid.

**13. Bidder's Signature**

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

\_\_\_\_\_  
(Signature and Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Address)

Attachment E

HUD 5369-B, Instructions to Offerors, Non-Construction



# 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:]

Attachment F

HUD 5370 C, General Conditions for Non-Construction Contracts –Section I

# 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. 11/30/2023)

Public Reporting Burden for this collection of information is estimated to average one hour 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. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**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 \$150,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 905.100) **greater than \$2,000 but not more than \$150,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

### Section I - Clauses for All Non-Construction Contracts greater than \$150,000

#### 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

proposal submitted before final payment of the contract.

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

(a) The [contractor/seller] will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The

[contractor/seller] will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. 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; and selection for training, including apprenticeship. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The [contractor/seller] will, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(c) The [contractor/seller] will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the [contractor/seller]'s legal duty to furnish information.

(d) The [contractor/seller] will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the [contractor/seller]'s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The [contractor/seller] will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The [contractor/seller] will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) In the event of the [contractor/seller]'s non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the [contractor/seller] may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The [contractor/seller] will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

## 17. Equal Opportunity for Workers with Disabilities

1. The [contractor/seller] will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The [contractor/seller] agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
- ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- iii. Rates of pay or any other form of compensation and changes in compensation;
- iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- v. Leaves of absence, sick leave, or any other leave;
- vi. Fringe benefits available by virtue of employment, whether or not administered by the [contractor/seller];
- vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- viii. Activities sponsored by the [contractor/seller] including social or recreational programs; and
- ix. Any other term, condition, or privilege of employment.

2. The [contractor/seller] agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

3. In the event of the [contractor/seller] noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.

4. The [contractor/seller] agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the [contractor/seller]'s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities.



The [contractor/seller] must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the [contractor/seller], a [contractor/seller] will satisfy its posting obligations by posting such notices in an electronic format, provided that the [contractor/seller] provides computers, or access to computers, that can access the electronic posting to such employees, or the [contractor/seller] has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the [contractor/seller] to notify job applicants of their rights if the [contractor/seller] utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

5. The [contractor/seller] will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the [contractor/seller] is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The [contractor/seller] will include the provisions of this clause in every subcontract or purchase order in excess of \$ 10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. The [contractor/seller] must, in all solicitations or advertisements for employees placed by or on behalf of the [contractor/seller], state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

## **18. 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.

## **19. 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.

## **20. 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.

## **21. Liens**

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

## **22. 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) 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
- (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

## Attachment G

### Oakland Housing Authority Economic Opportunities Policy



## **EXHIBIT B**

### OHA ECONOMIC OPPORTUNITIES POLICY

## Oakland Housing Authority Economic Opportunities Policy

**Background:**

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C, 1701U (hereinafter referred to as "Section 3") requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development financial assistance for housing and community development programs shall, to the greatest extent feasible, be given to low - and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

The U.S. Department of Housing and Urban Development's regulations implementing Section 3 are found at 24 CFR Part 135. It is the intent of OHA policy to comply fully with Section 3; and by publication of this policy, the OHA provides direction for application of this policy.

This policy shall remain in effect for all covered activities so long as this policy remains consistent with federal regulations or until changed by the Authority. . In any case where it is found that any provision of this policy or of a procedure or program undertaken in furtherance of this policy is found to be inconsistent with Section 3 or 24 CFR Part 135, Section 3 or 24 CFR Part 135 shall prevail.

**Policy Statement:**

*It is the policy of the Oakland Housing Authority to provide to the greatest extent feasible economic opportunities to low- and very low-income persons residing in Oakland metropolitan area (as defined in § 135.5 of 24 CFR Part 135 and to businesses meeting the definition of "Section 3 business concern" as defined by 24 CFR Part 135.*

*A Section 3 resident is :*

- A Public housing residents and/or
- An individual who live in the area where a HUD-assisted project is located and who is either low-or very-low income persons as determined by HUD

- **Determining Income Levels:**

- Low income is defined as 80% or below the median income of that area.
- Very low income is defined as 50% or below the median income of that area.

*(Income Limits are subject to change. Current Income Limits may be accessed on the OHA website at [www.oakha.org](http://www.oakha.org).)*

**Section 3 business concern** is a business that:

- Is 51 percent or more owned by Section 3 residents;
- Whose permanent, full-time employees include persons, at least 30% of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
- Provides evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or more of the dollar amount of the awarded contract.

In furtherance of this policy the Oakland Housing Authority shall develop programs and procedures necessary to implement this policy covering all procurement contracts where labor and/or professional services are provided, in order to achieve the goals outlined below. This policy does not apply to routine maintenance, repair or replacement work using HUD housing and community development assistance for housing rehabilitation; nor does it apply to contractors who only furnish materials or supplies

through OHA's procurement program, and do not undertake work, as in the installation of the material or equipment. All covered contracts executed after the adoption of this policy must comply with this policy.

**Goals:**

All contractors undertaking Section 3 covered projects and Section 3 covered activities on behalf of the Oakland Housing Authority are expected to meet the requirements of Section 3. Any contractor (whether or not it meets the definition of a Section 3 business), shall demonstrate compliance with the "greatest extent feasible" requirement of Section 3, must meet the numerical goals set forth below for providing training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns. In meeting the goals, contractors are to apply a system of priority selection from among those Section 3 residents eligible pursuant to § 135.34, 24 CFR Part 135:

*First priority* - residents of the development where the work is to be performed.

*Second priority* - other residents of Oakland Housing Authority properties.

*Third priority* - other residents of Oakland who are participants of HUD Youth build programs being carried out in the City of Oakland.

*Fourth priority* - other persons from the Oakland metropolitan area who meet the definition of Section 3 resident contained in § 135.5 of 24 CFR Part 135.

Furthermore, for all construction contracts in excess of \$100,000, contractors and their subcontractors are required to utilize appropriate State-approved apprenticeship programs that have graduated apprentices as a means to meet the Section 3 employment goals.

**Employment:**

All contractors will seek the greatest extent feasible to achieve a level of 30% of all new hires to be low to very low-income residents of the Oakland metropolitan area.

**Preference for Section 3 business concerns:**

It is OHA's policy to conduct all procurement transactions in a competitive manner. Within this framework, preference shall be awarded to Section 3 business concerns according to the following system:

**Small Purchases:**

For Section 3 covered contracts aggregating no more than \$100,000, the Authority shall follow its small purchase procedures as outlined in its procurement policy. *Small Purchases require at least 3 competitive quotes. Purchases under \$2,000 (also known as Micro Purchases) do not require competitive quotes.*

**Competitive (Sealed) Bids (IFBs):** (IFB=Invitation For Bids)

Where the Section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified Section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified Section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

1. Bids shall be solicited from all businesses (Section 3 business concerns and non Section 3 business concerns). An award shall be made to the qualified Section 3 business concern with the highest priority ranking (as defined in 24 CFR Part 135) and with the lowest responsive bid if that bid:
  - A. is within the maximum total contract price established in the Authority's budget for the specific project for which bids are being taken; and
  - B. is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

X = lesser of:

When the lowest responsive bid is less than \$100,000 . . . 10% of that bid or \$9,000

When the lowest responsive bid is:

At least \$100,000, but less than \$200,000 . . . 9% of that bid or \$16,000

At least \$200,000, but less than \$300,000 . . . 8% of that bid or \$21,000

At least \$300,000, but less than \$400,000 . . . 7% of that bid or \$24,000

At least \$400,000, but less than \$500,000 . . . 6% of that bid or \$25,000

At least \$500,000, but less than \$1 million . . . 5% of that bid or \$40,000

At least \$1 million, but less than \$2 million . . . 4% of that bid or \$60,000

At least \$2 million, but less than \$4 million . . . 3% of that bid or \$80,000

At least \$4 million, but less than \$7 million . . . 2% of that bid or \$105,000

\$7 million or more . . . 1 1/2% of the lowest responsive bid, with no dollar limit.

2. If no responsive bid by a Section 3 business concern meets the requirements of paragraph 1 of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.
3. In both paragraph 1 and 2 above, a bidder, to be considered as responsible, must demonstrate compliance with the "greatest extent feasible" requirement of Section 3.

Competitive Proposals (RFP) (*RFP=Request For Proposals*)

Where the Section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. In accordance to 24CFR135, the rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating systems. Proposals from firms not demonstrating compliance with the "greatest extent feasible" requirement of Section 3 shall not be considered responsible.

In accordance to 24 CFR Part 135.36, Appendix Section III(3)ii:

*“(3) Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).*

- (i) *For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.*
- (ii) *(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.”*
- (iii) *With regard to the section 3 strategy, the RFP shall require the disclosure of the contractor’s section 3 strategy to comply with the Section 3 training and employment*

*preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.*

Other Provisions:

1. Federal labor standards requirements: Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a--276a-7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or for work subject to HUD-determined prevailing wage rates, HUD policies and guidelines.
2. A section 3 business concern seeking a contract or a subcontract must submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract.
3. OHA will ensure compliance with section 3 requirements through efforts that may include the following:
  - A. Requiring that contractors submit relevant documentation certifying their eligibility for preference under the section 3 program, and/or demonstrating their compliance with section 3 requirements.
  - B. Conducting ongoing section 3 compliance review of applicable contractors and take appropriate action when they are found to be noncompliant with section 3 requirements.
  - C. Refraining from entering into a contract with any contractor after notification by HUD that the contractor has been found in violation of section 3 regulations.
  - D. Implementing procedures designed to notify section 3 residents about training and employment opportunities generated by section 3 covered assistance and section 3 business concerns about contracting opportunities generated by section 3 covered assistance;
  - E. Notifying potential contractors for section 3 covered projects of the requirements of this part.
4. All OHA section 3 covered contracts shall include the following clause set forth in 24 CFR 135.38:
  - 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 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.

Definitions:

The Oakland Housing Authority incorporates into this policy the definitions contained in § 135.5 of 24 CFR Part 135 Further, the Oakland Housing Authority makes no representation concerning

interpretation and meaning of Section 3 of the Housing Act of 1968, as amended, and of 24 CFR Part 135 beyond this policy. It is recommended that interest parties refer directly to the law and regulations for a complete understanding of their meaning.

## Attachment H

### Contractor's Summary Guide to Section 3 Compliance with Section 3 Business Certification and Action Plan



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's Dan Abrami at 510.587.5127 or [dabrami@oakha.org](mailto:dabrami@oakha.org)** 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: 510.587.5127**

Fax: 510.587.5141

**Email: [dabrami@oakha.org](mailto:dabrami@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

Phone: 510.587.2176

Email: [rdavis@oakha.org](mailto:rdavis@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	\$26,050 or less
2	\$29,750 or less
3	\$33,450 or less
4	\$37,150 or less
5	\$40,150 or less
6	\$43,100 or less
7	\$46,100 or less
8	\$49,050 or less

(Income limits eff. 03/01/2019)

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

Rufus Davis, Labor and Section 3 Compliance Officer  
Oakland Housing Authority  
1805 Harrison Street, First Floor  
Oakland, CA 94612  
Phone: 510.587.2176  
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



## 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 510-587-5127*).
- ☐ 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

### **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).

Attachment I

Sample Addendum Acknowledgement form (if applicable)

**Oakland Housing Authority**  
**BID # 16-015**  
**Bid Description: Lead Architect**

**Addendum #1**  
**(Page 1 of 2)**

Date issued and released, \_\_\_\_\_

The following questions were submitted by the deadline and are answered in this addendum.

**Question 1:**

**Answer:**

**This addendum is also issued to advise all potential bidders to note the following corrections:** *(All other items in the original bid documents remain in effect.)*

**Oakland Housing Authority**

**BID # 16-015**

**Bid Description: Lead Architect**

**Addendum #1**  
**(Page 1 of 2)**

**ACKNOWLEDGEMENT**

**Bidder hereby acknowledges this addendum:**

**Name of Firm:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Acknowledgement of this Addendum must be included with your bid.

## Attachment J

### OHA Insurance Requirements

## Oakland Housing Authority

---

### **INSURANCE REQUIREMENTS**

Consultant/Contractor/Organization 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/Contractor/Organizer, its agents, representatives, or employees.

#### ***Minimum Scope of Insurance***

Coverage shall be as least as broad 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 Liability** insurance appropriate to the consultant's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.
5. **Fidelity Bond** appropriate to the on/off site personnel - coverage is to be endorsed to include indemnification from misconduct and dishonesty of contractor's/consultant's personnel.
6. **Cyber Security Insurance coverage** is to be endorsed to include indemnification from breach of contract and unauthorized client data access.
7. **Professional Liability Coverage** is to be endorsed to include indemnification from misleading or fraudulent acts.
8. **Builders Risk Insurance** as required by the State of California
9. **Crane Physical Damage Insurance** as required by the State of California (Code Section 1763.1)
10. **Pollution Insurance** – CalEPA standards of air emissions.

#### ***Minimum Limits of Insurance***

Consultant/Contractor/Organizers shall maintain limits no less than:

- |   |   |
|---|---|
| 1. General Liability:   | <b>\$1,000,000</b> per occurrence for bodily injury, personal injury and property damage. If        |
| (Including operations, products and completed operations, as applicable.) | Commercial General Liability Insurance or other form with a general aggregate limit is used, either |

## **Oakland Housing Authority**

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:                           | <b>\$1,000,000</b> per accident for bodily injury and property damage.   |
| 3. Workers' Compensation and Employer's Liability: | <b>\$1,000,000</b> per accident for bodily injury and property damage.   |
| 4. Builders Risk Insurance:                        | <b>\$1,000,000</b> per occurrence for direct physical property damage.   |
| 5. Cyber Insurance:                                | <b>\$1,000,000</b> per occurrence to cover both 1 <sup>st</sup> and 3 <sup>rd</sup> party claims through the entire contract; \$200 per record per occurrence in the amount not to exceed the cost of the full contract. |
| 6. Builders Risk Insurance:                        | <b>\$1,000,000</b> per occurrence for direct physical property damage.   |
| 7. Crane Physical Damage Insurance:                | <b>\$1,000,000</b> per occurrence for direct physical property damage.   |
| 8. Pollution                                       | <b>\$1,000,000</b> per occurrence for direct air emissions violations.   |
| 9. Professional Liability Insurance:               | <b>\$1,000,000</b> 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; 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/Contractor/Organizers 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 is to contain, or be endorsed to contain, the following provisions.



## **Oakland Housing Authority**

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/Contractor/Organizer; or automobiles owned, leased, hired or borrowed by the Consultant/Contractor/Organizer.
2. For any claims related to this project, the Consultant's/Contractor's/Organizer'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/Contractor's/Organizer'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.

### ***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.

### ***Verification of Coverage***

Consultant/Contractor 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.

*\*Oakland Housing Authority shall be named as an additionally insured on all policies, certificate of insurance and endorsements.*

## Attachment K

OHA Sample On-Call Consultants' Services Contract

**CONTRACT FOR PROFESSIONAL CONSULTING AND  
ADVISORY SERVICES  
BY AND BETWEEN  
THE HOUSING AUTHORITY OF THE CITY OF OAKLAND  
AND \_\_\_\_\_**

This CONTRACT FOR PROFESSIONAL CONSULTING AND ADVISORY SERVICES (“Contract”) is made on \_\_\_\_\_, 2021 ("Effective Date") by and between the **HOUSING AUTHORITY OF THE CITY OF OAKLAND**, a public entity corporate and politic ("AUTHORITY") and \_\_\_\_\_, \_\_\_\_, a \_\_\_\_\_ Company ("CONTRACTOR"). AUTHORITY and CONTRACTOR are collectively referred to herein as the “Parties.”

**RECITALS**

**WHEREAS**, AUTHORITY is a Housing Authority duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the provision of the Housing Authorities Law which is Part 2 of Division 24 of the California Health and Safety Code commencing with Section 34200 et seq.; and

**WHEREAS**, pursuant to the Housing Authorities Law, AUTHORITY is authorized to make and execute contracts and other instruments necessary or convenient to exercise its powers; and

**WHEREAS**, CONTRACTOR was a successful proposer in connection with the AUTHORITY’s Request for Proposals for \_\_\_\_\_ Services released on \_\_\_\_\_, 2021 incorporated herein by this reference (“RFP No. 21-\_\_\_\_”); and

**WHEREAS**, CONTRACTOR has the expertise, special skills, knowledge and experience to perform the duties set out herein and in the RFP No. 21-\_\_\_\_ in \_ and agrees to provide such services to AUTHORITY.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

1. DESCRIPTION OF SERVICES. CONTRACTOR shall be on call to furnish all labor, material and equipment as outlined and specified in (i) the Scope of Services attached hereto as Exhibit A and incorporated herein by this reference once a Task Order is received and agreed to by both parties, (ii) RFP No. 21-\_\_\_ incorporated herein by this reference; and (iii) CONTRACTOR's proposal submitted to the AUTHORITY on \_\_\_\_, 2021 in connection with RFP No. 21-002 which is incorporated herein by this reference (collectively, "Service" or "Services").

1.1 Definition of Task Order. "Task Order" means a contract for services that does not procure or specify a firm quantity of services and that provides for the issuance of orders for the performance of tasks during the period of the contract. A task order contract requires a contractor to render services or deliver products as ordered by the Authority. There is no set frequency to the orders or a minimum order required. This means that the contractor must wait until there is a need from the Authority.

1.2 No Exclusivity. This is not an exclusive agreement, and CONTRACTOR acknowledges that nothing in this Agreement will be deemed to create any exclusivity for the benefit of Consultant, or otherwise waive, limit, or impair the Authority's ability to contract with other third parties providing the same or similar services as provided by the Consultant pursuant to this Agreement.

1.3 CONTRACTOR shall, as required by applicable code, law or regulation, provide all Services.

1.4 CONTRACTOR affirms that it is fully apprised that this Contract does not guarantee work or issuance of a Task Order. If a Task Order is issued and agreed upon between both parties, then CONTRACTOR affirms this it is fully apprised of all of the work to be

performed under the Task Order and Contract and CONTRACTOR agrees it can properly perform this work.

1.5 Acceptance by the AUTHORITY of CONTRACTOR’s performance under this Contract does not operate as a release of CONTRACTOR’s responsibility for full compliance with the terms of this Contract.

1.6 CONTRACTOR represents and maintains that it is skilled in the professional calling necessary to perform all services, duties and obligations required by this Contract and Exhibit “A”, to fully and adequately provide all services and the AUTHORITY relies upon this representation. CONTRACTOR shall perform the services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. CONTRACTOR further represents and warrants to the AUTHORITY that it has all licenses, permits, qualifications and approvals of whatever nature that are legally required to practice its profession. CONTRACTOR further represents that it shall keep all such licenses and approvals in effect during the Term of this Contract.

1.7 HUD Requirements. Contractor agrees to comply with all relevant HUD requirements, including those set forth in the General Conditions for Non-Construction Contracts, form HUD-5370-C (11/30/2023), attached hereto as **Exhibit "C"** and incorporated as if fully set forth herein. In the event of a conflict between the provisions in the body of this Contract and **Exhibit "C"**, the provisions set forth in **Exhibit "C"** shall prevail.

2. PERIOD OF PERFORMANCE. The term of this Contract shall commence on the Effective Date and continue in effect until \_\_\_\_\_, \_\_\_\_\_ unless earlier terminated pursuant to paragraph 13 below (“Term”). This contract also allows for two one-year option terms.

**Initial Term:** \_\_\_\_\_ – \_\_\_\_\_  
**Option Term One:** \_\_\_\_\_ – \_\_\_\_\_

**Option Term Two: \_\_\_\_\_ – \_\_\_\_\_**

3. COMPENSATION/PAYMENT.

3.1 The AUTHORITY will compensate CONTRACTOR for all services rendered, products provided and costs and expenses incurred for the Service as provided pursuant to this Contract and the Proposed Cost attached hereto as **Exhibit "B"** and incorporated herein by this reference.

3.2 The maximum total amount of compensation paid to the CONTRACTOR after services have been performed, by the AUTHORITY pursuant to this Contract shall not exceed the maximum total sum of \$\_\_\_\_\_, for the initial three year term, and \$\_\_\_\_\_ for each option term, for a total not to exceed amount of \$\_\_\_\_\_ including any expenses. The AUTHORITY is not responsible for any fees or costs above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products, unless agreed to by the AUTHORITY in writing. There is no guarantee of work.

3.3 CONTRACTOR shall invoice the AUTHORITY once service are rendered in accordance with Exhibits "A" attached hereto. AUTHORITY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. AUTHORITY shall not be liable for any interest or late charges in the performance of this Contract.

3.4 The AUTHORITY's obligation for payment of this Contract beyond the current fiscal year end is contingent upon and limited by the availability of AUTHORITY funding from which payment can be made. No legal liability on the part of the AUTHORITY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, AUTHORITY shall immediately notify CONTRACTOR in writing, and this Contract shall be deemed terminated and have no further force and effect.

3.5 No payroll or employment taxes of any kind will be withheld or paid by Authority on behalf of Contractor. Authority will not treat Contractor as an employee with respect to the Contract services for any purpose, including federal and state tax purposes. Contractor understands and agrees that it is Contractor's sole responsibility to pay all taxes required by law,

including self-employment social security tax. Authority will issue an IRS 1099 Form, or other appropriate tax-reporting document, to Contractor for the Contract Services.

4. ADDITIONAL SERVICES. The CONTRACTOR shall not perform any additional services or incur additional expenses, outside of this Contract, without first receiving the express written consent to proceed from the AUTHORITY in the form of an amendment to this Contract.

5. AMENDMENTS TO WORK PROGRAM. All amendments to this contract will require Board approval.

6. INSPECTION OF SERVICES. All performances under this Contract shall be subject to inspection by the AUTHORITY. CONTRACTOR shall provide adequate cooperation to AUTHORITY representative to permit him/her to determine CONTRACTOR's conformity with the terms of this Contract. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Contract or **RFP No. 21-\_\_\_\_**, the AUTHORITY shall have the right to require CONTRACTOR to perform the services or provide the products in conformance with the terms of this Contract and/or **RFP No. 21-\_\_\_\_** at no additional cost to the AUTHORITY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the AUTHORITY shall have the right to: (1) require CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of this Contract; and/or (2) if applicable, reduce the Contract price to reflect the reduced value of the services performed or products provided. The AUTHORITY may also terminate this Contract for default and charge to CONTRACTOR any costs incurred by the AUTHORITY because of CONTRACTOR's failure to perform.

CONTRACTOR shall establish adequate procedures for self-monitoring to ensure proper performance under this Contract; and shall permit an AUTHORITY representative to monitor, assess or evaluate CONTRACTOR's performance under this Contract at any time upon reasonable notice to CONTRACTOR.

7. INDEPENDENT CONTRACTOR. CONTRACTOR is, for purposes relating to this Contract, an independent contractor and shall not be deemed an employee of the

AUTHORITY. It is expressly understood and agreed that CONTRACTOR (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which AUTHORITY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the Parties; and CONTRACTOR shall hold AUTHORITY harmless from any and all claims that may be made against AUTHORITY based upon any contention by a third party that an employer-employee relationship exists by reason of this Contract. It is further understood and agreed by the Parties that CONTRACTOR in the performance of this Contract is subject to the control or direction of AUTHORITY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

8. SUBCONTRACT FOR WORK OR SERVICES. No contract shall be made by CONTRACTOR with any other party for furnishing any of the work or services under this Contract without the prior written approval of the AUTHORITY; but this provision shall not require the approval of contracts of employment between CONTRACTOR and personnel assigned under this Contract, or for Parties named in **RFP No. 21-\_\_\_\_\_** and agreed to under this Contract.

9. SERVICE-CONTRACT ACT. For all service contracts in excess of \$2,500, whose principal purpose of which is to furnish services through the use of "service employees", both Parties hereby agree to comply with the Service Contract Act, as amended (41 U.S.C. 6701, et seq.), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.), and related Secretary of Labor regulations and instructions (29 CFR Parts 4, 6, 8, and 1925).

10. INDEMNIFICATION. CONTRACTOR shall indemnify and hold harmless the AUTHORITY, its directors, officers, Board of Commissioners, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any act, omission, or services of Contractor, its officers, employees, subcontractors, independent contractors, agents or representatives arising out of or in any way relating to this Contract, including but not limited to



property damage, bodily injury, or death (Authority employees included), or any other element of damage of any kind or nature whatsoever, relating to or in any way connected with or arising from the performance of Contractor, its officers, employees, subcontractors, independent contractors, agents or representatives from this Contract. Contractor shall defend, at its sole expense, all costs and fees including, but not limited to, attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or legal action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of Authority; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to Indemnitees as set forth herein. Contractor's obligation hereunder shall be satisfied when Contractor has provided to Authority the appropriate form of dismissal relieving Authority from any liability for the action or claim involved.

The specified insurance limits required in this Contract shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

Authority does not, and shall not, waive any rights that it may possess against Contractor because of acceptance by Authority, or the deposit with Authority, of any insurance policy or certificate required pursuant to this Contract. This hold harmless, indemnification and defense provision shall apply regardless of whether or not any insurance policies determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. The indemnity obligations of Contractor contained in this Contract shall survive the termination and expiration of this Contract.

11. INSURANCE. Without limiting or diminishing the CONTRACTOR's obligation to indemnify or hold the AUTHORITY and the Indemnitees harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following

insurance coverages during the term of this Contract. As respects to the insurance section only, the AUTHORITY herein refers to the Housing Authority of the City of Oakland, its directors, officers, Board of Commissioners, employees, elected or appointed officials, agents or representatives as Additional Insureds.

11.1 Workers' Compensation. If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the AUTHORITY.

11.2 Commercial General Liability. Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, employment practices liability, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR's performance of its obligations hereunder. Policy shall name the AUTHORITY, as Additional Insureds. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Contract or be no less than two (2) times the occurrence limit.

11.3 Vehicle Liability. If vehicles or mobile equipment are used in the performance of the obligations under this Contract, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Contract or be no less than two (2) times the occurrence limit. Policy shall name the AUTHORITY, as Additional Insureds.

11.4 Professional Liability. CONTRACTOR shall maintain Professional Liability Insurance providing coverage for the CONTRACTOR's performance of work included within this Contract, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If CONTRACTOR's Professional Liability Insurance is written on

a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Contract and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Contract; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

11.5 General Insurance Provisions - All lines.

a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the Authority Risk Manager. If the Authority's Risk Manager waives a requirement for a particular insurer, such waiver is only valid for that specific insurer and only for one policy term.

b. The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$2,500,000 per occurrence, each such retention shall have the prior written consent of the Authority Risk Manager before the commencement of operations under this Contract. Upon notification of self-insured retention unacceptable to the AUTHORITY, and at the election of the Authority's Risk Manager, CONTRACTOR's carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Contract with the AUTHORITY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

c. CONTRACTOR shall cause CONTRACTOR's insurance carrier(s) to furnish the AUTHORITY with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of

Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the Authority Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) calendar days written notice shall be given to the AUTHORITY prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Contract shall terminate forthwith, unless the AUTHORITY receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. ***CONTRACTOR shall not commence operations until the AUTHORITY has been furnished original Certificate(s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section, showing that such insurance is in full force and effect. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.***

d. It is understood and agreed to by the Parties hereto that the CONTRACTOR's insurance shall be construed as primary insurance, and the AUTHORITY's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

e. If, during the term of this Contract or any extension thereof, there is a material change in the scope of services; or, there is a material change

in the equipment to be used in the performance of the scope of work; or, the term of this Contract, including any extensions thereof, exceeds two (2) years; the AUTHORITY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Contract, if in the Authority Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

f. CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Contract.

g. The insurance requirements contained in this Contract may be met with a program(s) of self-insurance acceptable to the AUTHORITY.

h. CONTRACTOR agrees to notify AUTHORITY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Contract.

11.6 Cyber Insurance. CONTRACTOR must have Cyber Insurance with coverages of \$1,000,000 per occurrence to cover both 1<sup>st</sup> and 3<sup>rd</sup> party claims through the entire contract. \$200 per record per occurrence in the amount not to exceed the cost of the full contract.

## 12. GENERAL.

12.1 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to AUTHORITY pursuant to this Contract, free from all liens, claims or encumbrances.

12.2 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations, in connection with performance of the services set forth in this Contract. CONTRACTOR will comply with all applicable AUTHORITY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

12.3 CONTRACTOR shall be liable for any damage caused by CONTRACTOR to any AUTHORITY properties during CONTRACTOR's performance of the services or authorized extra work, and such damage shall be repaired at the CONTRACTOR's sole expense.

12.4 CONTRACTOR represents and warrants that CONTRACTOR is registered to do business in the State of California with the California Secretary of State.

12.5 CONTRACTOR acknowledges that Authority may enter into agreements with other contractors or consultants for services similar to the services that are the subject of this Contract or may have its own employees perform services similar to the services contemplated by this Contract.

12.6 Without limiting Contractor's hold harmless, indemnification and insurance obligations set forth herein, in the event any claim or action is brought against the Authority relating to Contractor's performance or services rendered under this Contract, Contractor shall render any reasonable assistance and cooperation, which the Authority shall require.

### 13. TERMINATION.

13.1 AUTHORITY may terminate this Contract without cause at any time upon written notice served upon the CONTRACTOR stating the extent and effective date of termination.

13.2 AUTHORITY may, upon five (5) days written notice, terminate this Contract for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Contract or fails to make progress so as to endanger performance and does not immediately cure such failure. In the event of such termination, the AUTHORITY may proceed with the work in any manner deemed proper by AUTHORITY.

13.3 After receipt of the notice of termination, CONTRACTOR shall:

- a. Stop all work under this Contract on the date specified in the notice of termination; and

b. Transfer to AUTHORITY and deliver in the manner as directed by AUTHORITY any data, estimates, graphs, summary reports, or other related materials and or records, as may have been prepared or accumulated by CONTRACTOR in performance of services, whether completed or in progress or which, if the Contract had been completed or continued, would have been required to be furnished to AUTHORITY.

13.4 After termination, AUTHORITY shall make payment only for CONTRACTOR's performance, which has been completed and accepted by AUTHORITY, up to the date of termination in accordance with this Contract.

13.5 CONTRACTOR's rights under this Contract shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Contract by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Contract. In such event, CONTRACTOR shall not be entitled to any further compensation under this Contract.

13.6 If the termination is due to a default by CONTRACTOR the AUTHORITY may take over the work and prosecute the same to completion by contract or otherwise. CONTRACTOR shall be liable to the AUTHORITY for any reasonable additional costs incurred by the AUTHORITY to revise work for which the AUTHORITY has compensated CONTRACTOR under this Contract, but which the AUTHORITY has determined in its sole discretion needs to be revised in part or whole to complete the services required under this Contract. Following discontinuance of services, the AUTHORITY may arrange for a meeting with CONTRACTOR to determine what steps, if any, CONTRACTOR can take to adequately fulfill its requirements under this Contract. In its sole and absolute discretion, AUTHORITY's representative may propose an adjustment to the terms and conditions of the Contract, including the Contract price. Such contract adjustments, if accepted in writing by the Parties, shall become binding on CONTRACTOR and shall be performed as part of this Contract. In the event of termination due to a default by CONTRACTOR, this Contract shall terminate immediately upon CONTRACTOR's receipt of the notice of termination. Termination of this Contract for cause

may be considered by the AUTHORITY in determining whether to enter into future contracts with CONTRACTOR.

13.7 The rights and remedies of the AUTHORITY provided in this Section are in addition to any other rights and remedies provided by law, in equity or under this Contract.

14. FORCE MAJEURE. If either Party is unable to comply with any provision of this Contract due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as Acts of God, acts of war, civil disorders, or other similar acts, such Party shall not be held liable for such failure to comply, provided the other Party receives written notice of such force majeure event no later than five (5) calendar days after commencement of such force majeure event.

15. COMPLIANCE WITH CALIFORNIA GOVERNMENT CODE. It is understood and agreed that Contractor shall comply with California Government Code, Section 7550. Government Code, Section 7550 provides in part that when the total cost for work performed for a local Authority by nonemployees of such Authority exceed Five Thousand Dollars (\$5,000), any document or written report prepared in whole or in part by nonemployees for such Authority shall contain, in a separate section, the numbers and dollar amount of all contracts and subcontracts relating to the preparation of such document or written report.

16. CONFLICT OF INTEREST. CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Contract. CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Contract. CONTRACTOR agrees to inform the AUTHORITY in writing of all CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the AUTHORITY's interests.

CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from



individuals or firms with whom CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Contract.

CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to AUTHORITY employees.

17. ADMINISTRATION. The AUTHORITY's Executive Director (or designee) shall administer this Contract on behalf of AUTHORITY. \_\_\_\_\_ ( ) shall administer this Contract on behalf of CONTRACTOR.

18. ASSIGNMENT. This Contract shall not be delegated or assigned by CONTRACTOR, either in whole or in part, without prior written consent of AUTHORITY. Any assignment or purported assignment of this Contract by CONTRACTOR without the prior written consent of AUTHORITY will be deemed void and of no force or effect.

19. NONDISCRIMINATION. CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, age, religious creed, color, national origin, ancestry, disability (including HIV or AIDS status), medical condition, sexual orientation, marital or domestic partner status, sex or gender identity in the performance of this Contract; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment Practices Act (commencing with Section 1410 of the Labor Code), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

20. ALTERATION. No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.

21. ELIGIBILITY. Services and benefits shall be provided by CONTRACTOR to individuals without reference to their ethnic group identification, race, age, religious creed, color, national origin, ancestry, disability, sexual orientation, marital or domestic partner status, sex or gender identity.

22. LICENSE AND CERTIFICATION. CONTRACTOR verifies upon execution of

this Contract, possession of a current and valid license in compliance with any local, State, and Federal laws and regulations relative to the scope of services to be performed under Exhibit A and **RFP No. 21-\_\_\_** and that services(s) will be performed by properly trained and licensed staff.

23. CONFIDENTIALITY. CONTRACTOR shall observe all Federal, State and AUTHORITY's regulations concerning confidentiality of records. The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Contract. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; social security numbers, medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; AUTHORITY information or data which is not subject to public disclosure; AUTHORITY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Contract, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Contract. The CONTRACTOR shall promptly transmit to the AUTHORITY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Contract or authorized in advance in writing by the AUTHORITY, any such information to anyone other than the AUTHORITY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voiceprint or a photograph.

CONTRACTOR must execute the attached Confidentiality Agreement, Exhibit D.

24. WORK PRODUCT. All reports, preliminary findings, or data assembled or compiled by CONTRACTOR under this Contract become the property of the AUTHORITY. The AUTHORITY reserves the right to authorize others to use or reproduce such materials. Therefore, such materials shall not be circulated in whole or in part, nor released to the public, without the

direct written authorization of the AUTHORITY Executive Director or an authorized designee.

25. RECORDS AND DOCUMENTS. The Contractor, and any sub-consultants or sub-contractors, shall allow all duly authorized Federal, State, and/or Authority officials or authorized representatives access to the work area, as well as all books, documents, materials, papers, and records of the Contractor, and any sub-consultants or sub-contractors, that are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions. The Contractor, and any sub-consultants or sub-contractors, further agree to maintain and keep such books, documents, materials, papers, and records, on a current basis, recording all transactions pertaining to this Contract in a form in accordance with generally acceptable accounting principles. All such books and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter periods of retention, all books, records, and supporting detail shall be retained for a period of at least seven (7) years after the expiration of the term of this Contract.

26. NONCONFORMING PAYMENTS. In the event CONTRACTOR receives payment under this Contract, which is later disallowed by the AUTHORITY for nonconformance with the terms of the Contract, CONTRACTOR shall promptly refund the disallowed amount to the AUTHORITY on request; or at its option, the AUTHORITY may offset the amount disallowed from any payment due to CONTRACTOR.

27. NO PARTIAL DELIVERY OF SERVICES. CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Contract.

28. LABOR STANDARDS. CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

29. JURISDICTION AND VENUE. This Contract shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Contract shall be filed only in the Superior Court of the State of California located in Oakland, California, and the Parties waive any provision of law providing for a change of venue to another location.

30. WAIVER. Any waiver by AUTHORITY of any breach of any one or more of the terms of this Contract shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term thereof. Failure on the part of the AUTHORITY to require exact, full and complete compliance with any terms of this Contract shall not be construed as in any manner changing the terms hereof, or estopping AUTHORITY from enforcement hereof.

31. SURVIVABILITY OF TERMS. Provisions of this Contract that are not fully performed or are not capable of being fully performed as of the date of termination will survive termination of this Contract.

32. NOTICES. Any notice or other communication required or permitted under this Contract shall be sufficiently given if delivered in person or sent by one of the following methods, (1) registered U.S. mail, return receipt requested (postage prepaid); (2) certified U.S. mail, return receipt requested (postage prepaid); or (3) commercially recognized overnight service with tracking capabilities. Notices or communications shall be deemed properly delivered to the respective Parties at the addresses set forth below, or such other addresses provided by the Parties in writing, and are deemed submitted as of the date personally delivered or two days after their deposit in the Unites States mail postage prepaid, or via overnight service:

Patricia Wells	_____
Executive Director	_____
Housing Authority of the City of Oakland	_____
1619 Harrison Street	_____
Oakland, CA 94612	_____

33. MISCELLANEOUS. As used in this Contract, the term CONTRACTOR also includes CONTRACTOR’s owners, officers, employees, representatives and agents.

34. SEVERABILITY. If any provision in this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

35. AUTHORITY. The undersigned represents and warrants that he or she has full power and authority to enter into this Contract and to bind Contractor in accordance with the

terms of this Contract.

36. NO THIRD PARTY BENEFICIARIES. The Parties to this Contract acknowledge and agree that the provisions of this Contract are for the sole benefit of the Contractor and the Authority, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

37. ENTIRE CONTRACT. This Contract, including any attachments or exhibits, constitutes the entire Contract of the Parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. In the event of any conflict between this Contract and any other written agreement or acknowledgement, the terms of this Contract shall prevail.

This Contract may be changed or modified only by a written amendment signed by authorized representatives of both Parties.

38. NON-LIABILITY OF AUTHORITY OFFICIALS, EMPLOYEES AND AGENTS. No member, official, employee or agent of the Authority shall be personally liable to Contractor in the event of any default or breach by the Authority or for any amount, which may become due to Contractor or its successor or on any obligation under the terms of this Contract.

39. ADDITIONAL FEDERAL REQUIREMENTS. Whereas the work and services herein may be subject to applicable Federal, State, and local laws and regulations, including but not limited to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200). Consultant, its contractors, its sub-contractors, consultants, and sub-consultants shall comply with, to the extent applicable, the following requirements:

39.1 Equal Employment Opportunity - Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR, Subtitle B, chapter 60): The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor shall ensure that all qualified applicants shall receive consideration for employment

without regard to race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and the employees are treated during employment, without regard to their race color, religion, sex, or national origin. Such actions shall include, but are not limited to, the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in a conspicuous place, available to employees and applicants for employment, notices to be provided by the Authority setting forth the provisions of this non-discriminating clause.

39.2 Copeland “Anti-Kickback” Act (18 U.S.C. 874): CONTRACTOR shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Authority will report all suspected or reported violations to the U.S. Department of Housing and Urban Development, (HUD).

39.3 Davis-Bacon Act, as amended (40 U.S.C. sections 3141-3148): When required by Federal program legislation, all construction contracts awarded by the Authority of more than \$2000 shall comply with the Davis-Bacon Act (40 U.S.C. sections 3141-3148) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under the Davis-Bacon Act, CONTRACTOR shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, CONTRACTOR shall be required to pay wages not less than once a week. The Authority will report all suspected or reported violations to HUD.

39.4 Contract Work Hours and Safety Standards Act (40 U.S.C. sections 3701-3708): Where applicable, in a contract awarded by Authority in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or

laborers CONTRACTOR shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. sections 3701-3708), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Contract Work Hours and Safety Standards Act, each Contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Contract Work Hours and Safety Standards Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous or dangerous.

These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

39.5 Rights to Inventions Made Under a Contract or Agreement: Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

39.6 Rights to Data and Copyrights: Consultants and Contractors shall comply with all applicable provisions pertaining to the use of data and copyrights pursuant to 48 CFR section 27.4, Federal Acquisition Regulations (FAR).

39.7 Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended: in the event this Contract is in excess of \$100,000 Contractor shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations will be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).

39.8 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

39.9 Debarment and Suspension (Executive Orders (E.O.s) 12549 and 12689): No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 2 CFR part 180. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

39.10 Drug-Free Workplace Requirements: The Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106) CONTRACTOR certifies that they will provide drug-free workplaces. CONTRACTOR certifies that it will comply with drug-free workplace requirements in accordance with the Drug-Free Workplace Act and with HUD's rules at 2 CFR part 182.

39.11 Federal Employee Benefit Clause: No member of or delegate to the congress of the United States shall be admitted to any share or part of this Contract or to any benefit to arise from the same.

39.12 Energy Efficiency: Mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871).



40. EXHIBITS. The following exhibits are attached hereto and incorporated herein by this reference:

- i. Exhibit A - Scope of Services;
- ii. Exhibit B - Payment Schedule;
- iii. Exhibit C - Form HUD-5370-C (11/30/2023), General Conditions for Non-Construction Contracts; and
- iv. Exhibit D - Confidentiality Agreement.

**(Remainder of Page Intentionally Blank)**

**(Signatures on next page)**

**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorized representatives to execute this Contract as of the date set forth above.

“AUTHORITY”

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

By: \_\_\_\_\_  
Patricia Wells, Executive Director

Date: \_\_\_\_\_

“CONTRACTOR”

\_\_\_\_\_, \_\_\_\_\_, a \_\_\_\_\_

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

Date: \_\_\_\_\_

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

**Task Orders:** Multiple Contractors are being recommended as prequalified for Specialty Area \_\_\_\_\_. Work will be awarded on a Task Order basis, when a task arises. OHA will outline the scope of work and the needed by date to prequalified Contractors and the assignment will be awarded to the Contractor that can best meet the needs of the Authority, offers the best value to the Authority, and can deliver the assignment within the timeline the Authority requires.

The Authority will authorize an engagement under this agreement by issuing an engagement letter for each task order requested under this agreement. The engagement letter will include the objective, scope and proposed timeline/schedule of the task requested. The Contractor shall provide written acceptance of the engagement letter and shall be required to provide the Services and Deliverables within the scope and timeline specified in each engagement letter and in accordance with the rates and costs outlined in Exhibit B.

**Insert General Scope from RFP for Specific Specialty or Specialties**

**EXHIBIT “B”**  
**PROPOSED COSTS**

SPECIALTY AREA (3) – MANAGEMENT ADVISORY & CONSULTING SERVICES

**Hourly Rates for the Initial Term Three Year Term**

<b>Title</b>	<b>Area 3</b>
Director/Principal	
Senior Associate /Senior Project Mgr.	
Associate / Project Mgr.	
Analyst	
Travel Cost	

**Hourly Rates for Option Year One**

<b>Title</b>	<b>Area 3</b>
Director/Principal	
Senior Associate /Senior Project Mgr.	
Associate / Project Mgr.	
Analyst	
Travel Cost	

**Hourly Rates for Option Year Two**

<b>Title</b>	<b>Area 3</b>
Director/Principal	
Senior Associate /Senior Project Mgr.	
Associate / Project Mgr.	
Analyst	
Travel Cost	

\* Travel will be billed at actual cost not to exceed rate above without prior approval by OHA.

\*\*None of the above cost will exceed the contracted amount of \$750,000.

**EXHIBIT “C”**  
**Form HUD 5370-C Section I**  
**General Conditions for Non-Construction Contracts**

(Behind this page)

**EXHIBIT “D”** |  
**CONFIDENTIALITY AGREEMENT**

(Behind this page)

# NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT ("Agreement") is entered into by ("Consultant") and the Housing Authority of the City of Oakland ("Authority") as of \_\_\_\_\_, 2021 ("Effective Date"). Consultant and Housing Authority are collectively referred to herein as the "Parties" and individually as a "Party."

## RECITALS

- A. Authority is a Housing Authority duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the provision of the Housing Authorities Law which is Part 2 of Division 24 of the California Health and Safety Code commencing with Section 34200 et seq.
- B. In its ordinary course of business, Authority collects and maintains, among other things, personally identifiable information, the confidentiality of which is protected by the Privacy Act of 1974 (5 U.S.C. § 552a), other information relevant to Authority's administration of various affordable housing and tenant based rental assistance programs, Authority's information technology ("Information Technology") infrastructure information, deliberative process, and human resources related information ("HR Information").
- C. Pursuant to that certain Contract for \_\_\_\_\_ by and between Authority and Consultant dated \_\_\_\_\_, 2021 ("Contract") Consultant is assisting Authority in \_\_\_\_\_ and Consultant will have access to confidential information.
- D. Authority wishes to make the data available to Consultant for the administration and implementation of the Contract and to allow Consultant to use the data for the purposes for which the data is being provided or maintained, but only if the data are used and protected in accordance with the terms and conditions stated in this Agreement.

NOW, THEREFORE, upon receipt of such assurance of qualification and capability, it is hereby agreed between Authority and Consultant as follows:

## **ARTICLE 1.** **INFORMATION SUBJECT TO THIS AGREEMENT**

Section 1.1 Recitals. The Recitals set forth above are true and correct and incorporated herein by this reference.

Section 1.2 Definition. The following information shall be referred to herein as the "Confidential Information":

(a) all information or material provided by Authority or its agents that has or could have value or other utility in the business or prospective business of Authority or its subsidiaries, affiliates or associated parties. Confidential Information also includes all information provided by

Authority or its agents of which unauthorized disclosure could be detrimental to the interests of Authority or its subsidiaries, affiliates or associated parties whether or not such information is identified as Confidential Information by Authority. By example and without limitation, Confidential Information includes, but is not limited to, any and all such information of the following or similar nature, whether or not reduced to writing: correspondence, agreements and any other information or procedure that are treated as or designated secret or confidential by Authority,

(b) all tangible or intangible information and materials, in any form or medium, whether provided or disclosed by Authority or an affiliate of Authority, or accessed, observed or otherwise obtained by Consultant that is related to Authority's business, participants, clients (including identities, characteristics and activities), business plans, strategies, forecasts or forecast assumptions, operations, methods of doing business, records, finances, assets, technology (including software, data bases, data processing or communications networking systems), data or information or materials that reveal research, technology, practices, procedures, processes (including deliberative processes), methodologies, know how, or other systems or controls by which Authority's services, applications and methods of operations or doing business are developed, conducted or operated, and all information or materials derived there from or based thereon,

(c) All Authority Information Technology infrastructure information, and

(d) Data collected or maintained by Authority containing personally identifiable information, the confidentiality of which is protected by the Privacy Act of 1974 (5 U.S.C. § 552a) (the "Privacy Act"), Federal HIPPA regulations and State of California Welfare and Instructions Code Section 5328 regarding confidentiality, including, but not limited to the following:

(1) Case notes summarizing communications with applicants, tenants, landlords, clients, or program participants;

(2) Landlord mailing addresses, landlord phone numbers, landlord emails, or other landlord identifying information;

(3) Tenant names, tenant phone numbers, tenant emails, or other tenant identifying information;

(4) Documents related to tenant personal or household income;

(5) Information that would allow the public to discern if a unit occupant participates in a housing assistance program; and

(6) Lease terms, including but not limited to, the total amount of monthly rent due under the lease, amount of monthly rent arrears, penalties, fees, or other utility charges.

(e) The term "personally identifiable information" used herein shall mean personally identifiable information that can be used alone or in conjunction with any other reasonably available information, to identify a specific individual. Personally identifiable information includes, but is not limited to, an individual's name or the name of that individual's parents or guardians, social security number, driver's license number, identification number, specific home address, biometric records, date of birth, place of birth, or mother's maiden name. Additionally, the definition of the Privacy Act shall include the definition of Personally Identifiable Information contained in U.S. Department of Housing and Urban Development ("HUD") Notice PIH 2015-06, as may be amended, supplemented or superseded by HUD.

Section 1.3 Form of Confidential Information. Confidential Information under this Agreement may be in various forms, including, but not limited to, digital or written format, CD-ROMs, electronic data, hard copy, emails, in-person and virtual communications etc.

Section 1.4 Use of Confidential Information.

(a) Consultant shall not to disclose the Confidential Information or use such Confidential Information for any purpose other than in connection with, and in furtherance of, the Contract, and as permitted by this Agreement. Consultant acknowledges that he/she has and/or will receive access to such information in confidence and may receive or obtain further access to Confidential Information which is not available to the general public, and which is kept confidential. Authority is willing to provide Confidential Information to Consultant under the terms and conditions set forth herein for the purpose of allowing Consultant to implement and administer the Contract. Consultant agrees to protect such Confidential Information from disclosure to anyone other than Authority's Board of Commissioners, authorized employees, advisers, agents, attorneys, financiers and to such entities or persons to whom Consultant or Authority may owe a legal obligation to disclose such information or whose approval is necessary to administer the Contract. Each Party shall implement appropriate measures to protect against unauthorized use of, or access to, the Confidential Information. The Consultant may only use the Confidential Information in a manner and for a purpose consistent with this Agreement and the Contract. In addition, Consultant will comply with all provisions of State of California and federal law as to confidentiality of Confidential Information, including, but not limited the requirements of the Privacy Act of 1974 (5 U.S.C. §552a), Information Practices Act of 1977, the Fair Debt Collections Practices Act, California Public Records Act (Ca. Government Code Section 6250 et seq.), and provide written notice to Authority of any breaches thereof.

(b) Consultant may only disclose the Confidential Information to another party with the Authority's prior written consent, which may be withheld at the sole discretion of Authority; provided, however, all parties receiving Confidential Information shall be bound by the applicable terms of this Agreement. In the event Consultant becomes aware of any threatened or actual incidents concerning unauthorized use of, or access to such Confidential Information, Consultant will take appropriate actions to address all such incidents, including but not limited to notifying Authority, in writing, as promptly as possible, to enable Authority to expeditiously implement its response program. The Consultant will assist Authority in such implementation, and shall proceed diligently to terminate such unauthorized access, curtail such threatened or actual unauthorized use or disclosure, and recover such information and materials. Consultant



agrees to cooperate with Authority in every reasonable way to help Authority regain possession of the Confidential Information and prevent any future unauthorized use.

Section 1.5 Protection of Confidential Information. To protect the Confidential Information,

(a) Consultant will hold all Confidential Information received from Authority, its employees, consultants, board members and agents in strict confidence and will take reasonable care to prevent disclosure of such material to others. Upon termination of Consultant's duties, Consultant shall return to Authority, within twenty-four (24) hours of such termination and/or request by Authority, any and all digital or written copies of any Confidential Information in Consultant's possession in whatever form the Confidential Information may exist.

(b) Consultant will not disclose the Confidential Information to others unless expressly authorized by the Executive Director of Authority.

(c) The Consultant shall not use any of the Confidential Information to engage in any activities that would compete with Authority or any of its affiliates without the prior written consent of the Executive Director of Authority.

(d) Consultant will not publish the Confidential Information unless expressly authorized by the Executive Director in writing. Publication of the Confidential Information includes, but is not limited to, posting Confidential Information by written or oral communication, including but not limited to, on social media or other electronic means.

Section 1.6 Exceptions to Obligations.

(a) Consultant shall have no obligation with respect to any information that: (i) became known to Consultant prior to Authority's disclosure of the Confidential Information to Consultant; (ii) is, or subsequently becomes, generally available to the public without Consultant's breach of its obligation under this Agreement; (iii) is obtained by Consultant from a third party having a right to disclose such information; (iv) is independently developed by Consultant; or (v) except as limited in subsection (b) below, is required by law, governmental directive or court order to be disclosed by Consultant.

(b) In the event Consultant is required to disclose any Confidential Information by law, governmental directive or court order, Consultant may comply with such disclosure requirement, unless Authority, at its own expense, is successful in having the effect of such requirement stayed, revised, rescinded or otherwise nullified. In all events, Consultant agrees to promptly notify the Authority's Chief Officer of Program and Finance Administration (COPFA), or Human Resources Director in the event the COPFA is unavailable, if at any time a request or demand of any kind is made to Consultant to disclose any Confidential Information. Authority shall have the right, at its cost, to intervene in any proceeding in which Consultant is being asked to disclose any of the Confidential Information.

Section 1.7 Term. This Agreement is effective as of the Effective Date and shall remain in effect for the duration of the Contract and for 2 years after the termination of such Contract, unless terminated earlier as provided herein.

## **ARTICLE 2.** **LIMIT ON DISCLOSURE**

Section 2.1 No other Disclosure. Consultant shall not use or disclose Confidential Information for any administrative purposes unrelated to the Contract nor may the Confidential Information be applied in any manner to change the status, condition, or public perception of any individual on whom Confidential Information is maintained.

Section 2.2 No Publication or Release. Consultant shall not make any publication or other release of Confidential Information listing information regarding individuals even if the individual identifiers have been removed.

Section 2.3 Collection of Additional Information. Except in connection with administration and implementation of the Contract, Consultant shall not use Confidential Information to identify individuals for re- contacting or new information collection unless the Consultant has obtained advance written approval from Authority's Executive Director or designee.

Section 2.4 Disclosures Required by Law. Consultant shall only disclose the Confidential Information as expressly permitted hereunder, unless otherwise required by law.

Section 2.5 Notice of Information Request. Consultant shall notify Authority in writing immediately upon the receipt of legal, investigatory, or other demand for disclosure of Confidential Information.

Section 2.6 Notice of Breach. Consultant shall notify Authority immediately in writing upon discovering any breach or suspected breach of security or any disclosure of Confidential Information to unauthorized parties or agencies

Section 2.7 Criminal Liability. Any person who knowingly or willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be subject to criminal penalties under the Privacy Act and may be subject to prosecution under other applicable statutes. In the event of improper use or disclosure of the Confidential Information, the Consultant agrees to report the incident immediately to Authority in writing and to cooperate fully with Authority. Waiting over 24 hours after learning of an improper disclosure to report to Authority shall be considered a violation of this Agreement.

Section 2.8 Indemnification and Injunctive Relief. Consultant shall save, defend, indemnify and hold harmless Authority, its officials, employees and agents (the "Indemnitees") against liability for any suits, actions, judgments, injuries, damages, expenses, losses, or claim of any character, including attorney's fees, arising from, or relating to the conduct, acts or omissions of Consultant, their officials, employees, partners, agents, contractors or subcontractors in

connection with the performance of obligations under this Agreement. The Parties acknowledge that the unauthorized use of Authority's Confidential Information by Consultant, its employees or agents would cause irreparable harm and significant injury to Authority. Consultant further acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of the Confidential Information. Accordingly, Consultant agrees that Authority shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. Notwithstanding the foregoing, no Indemnatee shall be indemnified by Consultant against liability for any suits, actions, judgments, injuries, damages, expenses, losses, or claim of any character arising from, or relating to, negligent acts or willful misconduct of the Indemnatee in the performance of its obligations under this Agreement.

Section 2.9 Remedies. Without limiting the indemnification obligations set forth in Section 2.8 above, and in addition to other remedies discussed herein, in the event that Consultant violates this Agreement, Authority will be entitled to: (a) injunctive or mandatory relief against the Consultant including a temporary, preliminary and permanent court order restraining any further breach of this Agreement; (b) monetary damages; and (c) any other legal or equitable remedy or relief.

### **ARTICLE 3.** **SECURITY REQUIREMENTS**

#### Section 3.1 Maintenance of and Access to Confidential Information.

(a) Consultant shall retain the original version of the Confidential Information at a single location and may make no copy or extract of the Confidential Information available to anyone except Consultant personnel authorized by Authority as necessary for the purpose of implementing and administering the Contract.

(b) Consultant shall maintain Confidential Information (whether maintained on a personal computer or on printed or other material) in a space that is limited to access by authorized Consultant staff.

(c) Consultant shall ensure that access to Confidential Information maintained in computer memory is controlled by password protection. Consultant shall maintain all print-outs, CD-ROMS, or other physical products containing personally identifiable information derived from Confidential Information in locked cabinets, file drawers, or other secure locations when not in use.

(d) Authority shall have the right, at any time, to withdraw Consultant's access to a password and/or change Consultant's password. Consultant shall not share his/her password with anyone.

(e) Consultant shall ensure that all printouts, tabulations, and reports are edited for any possible disclosures of Confidential Information.

(f) Consultant shall, in conjunction with the Authority Information Technology administrator, establish security protections to ensure that Confidential Information cannot be used or taken by unauthorized individuals.

(g) Consultant shall comply with AUTHORITY's Information Technology Ethics Policy. [Note- Do you have one? If not we can delete or make more vague?]

### Section 3.2 Retention of Confidential Information.

Consultant shall return to Authority all Confidential Information or destroy the data under Authority supervision or by approved Authority procedures when the analysis, research, or evaluation of the Confidential Information that is the subject of this Agreement and the Contract has been completed or this Agreement terminates, whichever occurs first.

## ARTICLE 4. MISCELLANEOUS

Section 4.1 Termination. AUTHORITY shall have the right to terminate this Agreement, without cause, upon three (3) calendar days prior written notice to Consultant. Authority shall have the right to terminate this Agreement immediately for cause, upon the breach of this Agreement by Consultant.

Section 4.2 Ownership of Confidential Information. All Confidential Information shall remain the property of Authority. By disclosing the Confidential Information to Consultant under the terms and conditions of this Agreement, Authority does not grant any express or implied right or license to Consultant to, or in, Authority's Confidential Information, or in any modification, derivation, enhancement or improvement thereof.

Section 4.3 Amendments. This Agreement may be amended, extended, or terminated by mutual written agreement between the Consultant and Authority.

Section 4.4 Compliance with Laws. Consultant shall comply with all applicable Federal, State and local laws and regulations, in connection with performance under this Agreement.

Section 4.5 No Assignment. The rights, duties and obligations of Consultant under this Agreement are personal to the Consultant and the Consultant may not assign any of Consultant's rights, duties or obligations hereunder. Any assignment or purported assignment of this Agreement by Consultant without the prior written consent of Authority will be deemed void and of no force or effect.

Section 4.6 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 4.7 Waivers. Any waiver by Authority of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term thereof. Failure on the part of Authority to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof, or estopping Authority from enforcement hereof. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Authority, its agents, or employees, but only by an instrument in writing signed by an authorized officer of Authority.

Section 4.8 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. The Exhibits to this Agreement are hereby incorporated into this Agreement by this reference. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including, but not limited to, California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived by the Parties.

Section 4.9 Survival of Obligations. All obligations created by this Agreement shall survive change or termination of the Parties' business relationship. Termination shall not abrogate Consultant's obligations hereunder for Confidential Information received prior to the date of termination. The nondisclosure provisions of this Agreement shall survive the termination hereof and shall continue until written permission is obtained from Authority releasing Consultant from its confidentiality obligations hereunder.

Section 4.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement. This Agreement shall become effective when the Parties have duly executed and delivered signature pages of this Agreement to each other. Delivery of this Agreement shall be effectuated by electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

Section 4.11 Venue. This Agreement will be construed and enforced in accordance with the substantive laws of the State of California without regard to choice of law principles in effect in California.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

**"AUTHORITY"**

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

By: \_\_\_\_\_  
Patricia Wells, Executive Director

Consultant certifies and acknowledges that he/she has read and understands the terms and provisions of this Agreement and voluntarily accepts the duties and obligations set forth herein

**"CONSULTANT"**  
**[INSERT ENTITY NAME]**

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## Attachment L

### Vendor Protests and Claims Procedures

# **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."

---

**CONTRACTING & PURCHASING PROCEDURES**

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: \_\_\_\_\_