

Government of Puerto Rico  
Puerto Rico Planning Board  
San Juan, Puerto Rico

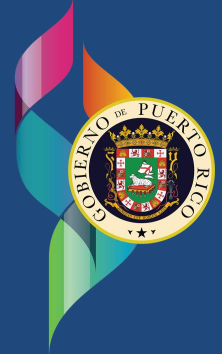
# REQUEST FOR PROPOSAL

**Proposal Due Date:** July 13<sup>th</sup>, 2021, 12:00pm AST

**Proposal Reference Number:** RFP-2021-001

**Project Title:** Advertising, Marketing and Communications  
Implementation Services

**Issue Date:** June 13<sup>th</sup>, 2021



HMGP 4339-0001-PR

## Table of Contents

I.	Project Description.....	4
A.	Project Overview .....	4
B.	Project Funding .....	4
II.	General Terms of the RFP Process .....	5
A.	RFP Schedule .....	5
B.	RFP Contact .....	5
C.	Inquiries, Addenda and Materials .....	5
1.	RFP Questions .....	5
2.	Replies and Addenda; Amendments .....	6
3.	Acknowledgement of Addenda.....	6
D.	Notification of Errors or Omissions .....	6
E.	Non-contractual Nature of the RFP .....	7
F.	No Commitment.....	7
G.	Cancellation of the RFP .....	7
H.	Unauthorized Communications; Cone of Silence.....	8
I.	The Board’s Rights .....	8
III.	Description of the Grant and Project Objectives .....	9
IV.	Scope of Work and Services .....	11
A.	Overview of Services.....	11
B.	Proposed Direct Costs.....	15
C.	Subcontracting of Services .....	15
V.	Proponent Submittal Requirements .....	15
A.	Proponent Eligibility .....	15
B.	Legal Entities .....	15
C.	Required Qualifications .....	16
D.	Representations and Warranties of the Proponent .....	17
E.	Conflicts of Interest.....	18
F.	Subcontractors.....	20

- G. Required Documentation for Contract..... 20
- VI. Proposal Submittal Requirements ..... 21
  - A. Submission of Proposals ..... 21
  - B. Required Contents..... 21
  - C. Proposal Submittal Deadline or Proposal Due Date ..... 21
  - D. Rejections, Alterations, or Withdrawals of Proposal Documents ..... 22
  - E. Validity of Proposal ..... 22
  - F. Costs of Preparing Proposal..... 22
  - G. Federal Grant Requirements ..... 22
  - H. Ownership of Proposal..... 23
  - I. Proprietary Data and Confidentiality..... 23
- VII. Small and Minority-Owned Businesses, Women’s Business..... 24
- VIII. Proposal Format ..... 24
  - A. Cover Letter and Table of Contents ..... 24
  - B. Qualifications and Experience ..... 24
  - C. Approach and Methodology ..... 26
  - D. Cost Proposal and Pricing Methodology ..... 27
  - E. Commitment to Compliance with all Applicable Federal and Puerto Rico Regulations 27
  - F. Proposal (Bid) Bond ..... 28
  - G. Designation of Subcontractors..... 28
  - H. Certificate of Insurance Coverage ..... 28
  - I. Disclosure of Recent Legal Actions ..... 30
  - J. Non-Collusion Affidavit ..... 30
  - K. Joint Venture (if applicable) ..... 30
  - L. Corporate Resolution ..... 31
  - M. Lobbying Certification..... 31
  - N. Neutrality ..... 31
  - O. Required Forms (Appendix) ..... 31
- IX. Evaluation Committee and Proposal Review..... 31
  - A. Evaluation Committee ..... 31
  - B. Completeness ..... 32

C. Nonmaterial and Material Variances ..... 32

D. No Price Adjustments ..... 33

E. Additional Information ..... 33

F. Single Proposal Response ..... 33

G. Disqualification..... 33

H. Evaluation Criteria ..... 34

I. Selection of Finalist Proponents; Oral Presentations..... 35

J. Best and Final Offers and Negotiations ..... 35

K. Other Considerations ..... 36

L. Most Advantageous Proposal ..... 36

M. Board’s Selection..... 36

N. Notice of Intent to Award ..... 36

O. Partial Contract Award..... 37

P. Post-award Protest Procedures..... 37

Appendix 1..... 38

    Cover Page..... 38

Appendix 2..... 41

    Sample Cost Proposal Form..... 41

Appendix 3..... 42

    Reference Form..... 42

Appendix 4..... 46

**Non-Collusion Affidavit** ..... 46

Appendix 5..... 47

Appendix 6..... 52

Designation Of Subcontractors ..... 52

Appendix 7..... 54

Appendix 8..... 55

Appendix 9..... 56

Appendix 10..... 69



## I. Project Description

### A. Project Overview

The Puerto Rico Planning Board (the “PRPB” or “Board”) is issuing this Request for proposals (this “RFP”) to solicit offers from interested and qualified public relations, marketing and/or advertising companies that do not have legal impediments (and are duly registered) to contract with the Government of Puerto Rico and/or with the federal government to provide services primarily to the Puerto Rico Planning Board including implementation of public relations, advertising, market research, commercial photography, graphic design, video and film production, website development, search engine optimization, and event planning services. This Project will be developed in accordance with the Hazard Mitigation Grant Program (“HMGP”) and the Federal Post Disaster Code Enforcement – Island- Grant under the HMGP (FEMA-4339-DR-PR/HMGP Project #4339-0001) (the “Grant”).

The Proponent selection process shall be conducted in accordance with the terms of this RFP. Notice of the RFP is published on the Board’s website, the Office of Management and Budget’s Bids and RFPs website, the Puerto Rico General Services Administration website, and on the website of the Central Office of Recovery, Reconstruction and Resiliency (“COR3”).

Proponents are requested to propose services to be provided under the direction of the Board. Each proposal must be in the format specified in this RFP, must include all of the required submittals specified herein and be submitted by the deadline set forth on Table 1 (the RFP Schedule). All Proponents are required to submit the Letter of Intent to Submit a Proposal as specified in this RFP. The Board intends to award a contract to one (1) Proponent, or multiple contracts when warranted and recommended by the Evaluation Committee.

### B. Project Funding

This RFP and the contract to be executed between the PRPB and the successful Proponent(s) are governed by certain federal terms and conditions for federal grants. The Appendix 10 to this RFP contains a listing of these required terms and conditions that must be acknowledged by the proponents as part of each proposal.

Proponents must be aware that local and federal administrative, civil and criminal responsibility might ensue from providing false or misleading information to obtain the contract award.

## II. General Terms of the RFP Process

### A. RFP Schedule

The following is the projected schedule for this RFP. This schedule is subject to change at the discretion of PRPB. Changes to the schedule will be published on PRPB's website as an addendum. It is the responsibility of respondents to periodically review the website for any changes to this timeline.

*Table 1 - RFP Schedule*

TARGET DATE*	EVENT
<b>June 13, 2021</b>	Publication of RFP
<b>June 21, 2021</b>	Deadline for Submitting Letters of Intent
<b>June 25, 2021</b>	Deadline for Submitting RFP Questions
<b>June 29, 2021</b>	Mandatory Pre-Proposal Conference
<b>July 01, 2021</b>	Last Day for Publication of Addenda
<b>July 13, 2021 (12:00 noon)</b>	Proposal Submission Deadline or Proposal Due Date
<b>July 31, 2021</b>	Approximate Date of Notice of Intent to Award

\*All listed times are Atlantic Standard Time (AST)

### B. RFP Contact

Proposals must be submitted electronically to the following contact:

Puerto Rico Planning Board  
 Post Disaster Code Enforcement (DR-4339-0001-PR)  
 Attention: Manuel Hidalgo, President (PRPB)  
[rfp@jp.pr.gov](mailto:rfp@jp.pr.gov)

### C. Inquiries, Addenda and Materials

#### 1. RFP Questions by Interested Proponents

All questions, inquiries or requests for clarification (as described in the next paragraph) related to requirements or processes of this RFP (collectively, "Communications") shall use the Project title "RFP-2021-001" on the reference line and must only be submitted by a proponent that has submitted a timely Letter of

Intent in accordance with Section V.A of this RFP. Communications shall be made in writing electronically to the contact address provided in Section II.B on or before the deadline set forth in Table 1.

If a proponent believes that specific matters are not sufficiently described or explained in the RFP, or that a conflict or discrepancy exists between or within the RFP, or with any federal, state or local applicable laws or regulations or other guide, directive, standard or requirement (“Applicable Laws and Regulations”), the proponent shall also submit a written request for clarification to the PRPB; provide that proponent has submitted a timely Letter of Intent.

Any Communications received after the deadline will not be answered, except at the discretion of the Board and for the benefit of all interested parties.

The content of Communications and all responses will be posted to <http://jp.pr.gov> on or before the date of the Mandatory Pre-Proposal Conference.

## 2. Replies and Addenda; Amendments

Responses to Communications, which directly affect an interpretation or effect a change to this RFP will be issued in writing by addendum and posted to <http://jp.pr.gov>. All such addenda issued by PRPB prior to the submittal deadline shall be considered part of this RFP. PRPB shall not be bound by any response to any Communications unless such response is provided in writing and formally included as a published addendum.

PRPB may change or revise any part of this RFP by issuing an amendment in the form of an addendum to the RFP. The last day for publishing an addendum on the PRPB website will be the date set forth on the RFP Schedule in Table 1.

## 3. Acknowledgement of Addenda

All addenda to the RFP will be posted to PRPB’s website <http://jp.pr.gov>. The proponent must exercise due care and is responsible for visiting PRPB’s website to learn of and review any published addenda. Any proposal that does not adhere to all published addenda will be marked non-responsive.

## D. Notification of Errors or Omissions

This RFP includes sufficient information to enable the proponents to prepare and submit

proposals and all required documents for consideration and evaluation by the PRPB. The proposals must be submitted in accordance with this RFP, including all exhibits and addenda hereto, which shall be deemed to be an integrated set of proposal requirements.

Proponents should use the utmost care to make sure their proposals are complete and error-free when submitted. Proposals may be corrected at any time before the submission deadline. After the proposal submittal deadline has passed, the proponent bears the burden of having submitted an adequate written proposal that contains all the information required under this RFP. PRPB may allow a proponent to correct a mistake or clerical error in a Proposal through clarifications (as opposed to discussions), only when both the existence of the mistake or error and the correction intended by the proponent are apparent from the face of the Proposal. Mistakes or clerical errors shall not be used to cure proposal deficiencies or omissions, alter the technical or cost elements of the proposal, and/or otherwise revise the proposal.

PRPB shall not be responsible or liable for any errors and/or misrepresentation that results from proposals that are inadvertently incomplete, ambiguous, inconsistent, or obviously erroneous.

#### E. Non-contractual Nature of the RFP

This RFP is not binding on the PRPB. Issuance of this RFP does not constitute a commitment by PRPB to award a contract.

This RFP has been prepared solely to solicit proposals. This is not a contract offer. The only document that will be binding on the PRPB will be the Contract duly executed by and between the PRPB and the successful Proponent after the selection process and the award in adherence to all federal and state procurement and contracting laws and regulations, including registration with the Puerto Rico Comptroller's Office.

#### F. No Commitment

This RFP does not commit the PRPB to award any costs or pay any costs or to award any contract, or to pay any costs associated with or incurred in the preparation of a proposal to respond to this RFP, or to procure or contract for services or supplies.

#### G. Cancellation of the RFP

The PRPB or the Government of Puerto Rico may cancel this RFP, postpone the Proposal Due Date, make changes to the RFP Schedule (Table 1) or cancel the award of a contract

at any time prior to the date of execution of a professional services contract.

#### H. Unauthorized Communications; Cone of Silence

No proponent, principal member of the proponent, contractors or proposed subcontractors, nor any agent, consultant, attorney or anyone acting on behalf of the proponent or any of its principal members or proposed subcontractors, shall communicate with the PRPB members, employees, or consultants working on the Project regarding this RFP or any proposal to be filed by any proponent, including its own proposal, or undertake any other communication related to this RFP up to the time of the award of a Contract, except as provided in Section II.C, above or in meetings officially scheduled by the PRPB. Any violation of the restriction imposed by this section regarding communications may constitute grounds for rejection of a proposal at any time.

Unless specifically provided otherwise in this RFP, the Cone of Silence does not apply to the following:

1. Communications with the Board's Legal Division and its staff, Board attorneys.
2. Oral communications at pre-bid conferences.
3. Oral presentations before the Evaluation Committee meetings.
4. Contract negotiations.

#### I. The Board's Rights

The Board reserves, at its sole discretion and for its sole convenience, the following rights with regard to this RFP, without limitation:

1. Reject any or all proposals
2. Amend this RFP
3. Correct errors in this RFP
4. Cancel the entire RFP or reduce the scope of services
5. Extend the deadline for submitting proposals
6. Issue one (1) or more subsequent RFPs for the same services
7. Appoint an evaluation committee to review proposals and make proponent selections
8. Seek the assistance of technical experts to review proposals and make recommendations
9. Invite one or more proponents for presentations and negotiations after review of proposals
10. Negotiate with any, all, or none of the proponents

11. Solicit best and final offers (BAFO) from all, some or none of the proponents
12. Award a contract to one (1) or more proponents
13. Award a contract without discussions or negotiations
14. Investigate the qualifications of any proponent under consideration, require additional information or confirmation of information furnished by a Proponent and require additional evidence of qualifications to perform the services or supply the products described in this RFP
15. Investigate the qualifications of Proponents and any subcontractors proposed by proponents
16. Waive nonmaterial variances
17. Disqualify proponents for non-responsiveness or proposal deficiencies
18. Award a contract for longer or shorter terms and/or with options to renew
19. Renegotiate or revise the contract based upon rule changes prior to and/or after the signature of the contract
20. Disqualify proposals if there is evidence of collusion or other illegal practices on the part of any one or multiple proponents
21. If any proponent selected for award refuses accept the award within the five (5) calendar days of the award date or to execute the awarded contract, the Board shall have the right to order the execution of the Proposal Guarantee (Bid Bond) in order to cover the difference between the proponent's cost and the cost proposed by the next qualified proponent, as well as to cover other damages and direct expenses of the Board
22. Exercise any other right or take any other action allowed by law or regulation

### III. Description of the Grant and Project Objectives

Hurricanes Irma and Maria caused catastrophic damage throughout Puerto Rico. Preliminary assessments established that, approximately, 250,000 properties were damaged as a result. Of these, it is estimated that 85,000 to 90,000 structures were informally constructed, meaning that they were not built in compliance with governing construction codes ("Codes"). Preliminary assessments of the damage that occurred to private, public, residential, and commercial buildings indicate that structures built in compliance with codes had significantly higher success rates in withstanding the high winds and flooding that Hurricanes Irma and Maria brought to the island.

Part of the PRPB's objectives for the Project are to:

1. Build the capacity of the personnel engaged in the enforcement of Applicable Laws and Regulations and to support enforcement personnel of the PRPB, OGP, and Tier 5 Municipalities.

2. Increase OGPe's capacity to issue permits in accordance with Applicable Laws and Regulations for all construction types, to reduce vulnerability to natural hazards such as hurricanes, earthquakes, and flooding, as well as any other disasters.
3. Enhance and strengthen the decision-making process through systemic data collection (e.g., construction type, materials, etc.), to help identify and evaluate vulnerabilities, hazards, and risks from natural and other hazards, to ensure that risk-appropriate building codes, methods, and practices are implemented.
4. Substantially increase the number of technical experts available to assist with compliance and enforcement in the future.
5. Establish a methodology to measure the impacts of this proposed work, with an emphasis on reducing the number of informally constructed structures to allow the PRPB and OGPe to make necessary adjustments as the programs envisioned by the Grant move forward.

To achieve these objectives, the Grant will support and enhance an island-wide program to enforce planning and zoning requirements, permit regulations, and building codes, resulting in significant reduction or eradication of informal construction in Puerto Rico and creating a more resilient building stock. This support and enhancement will come through a multi-layered approach, designed to create a strong foundation for Puerto Rico's future:

1. Increased staff support for both the PRPB and the Office of Management of Permits ("OGPe");
2. Investment in technological solutions to support operations;
3. Establishment of a robust, recurring training curriculum & an extensive community outreach program;
4. Increased data collection and sharing between Government of Puerto Rico ("GPR") Entities; and
5. Increased pool of trained experts to maintain and enhance resiliency and compliance in the future.

To assure the federal investment in Puerto Rico's infrastructure, the Board will enforce regulation compliance through orientations, notifications, fines, and, if necessary, an

administrative and/or judicial process. The federal grant obtained by the Board will allow it to hire and maintain a sufficient number of code enforcement officials on staff for both the Board and OGPe and will result in a financially self-sufficient program going forward. This self-sufficiency is critical to build capability and capacity, so that proper Code Enforcement may occur and the rate of informal construction – which is a threat to public health and safety – will be significantly decreased, with the future goal of eradicating it completely.

The Board, through a competitive process, has already engaged the services of a Project Manager for the planning and administration of the Project. Recently, FEMA approved a series of amendments to the Grant, including an increase in the funding available for the significant community outreach program required to support the Board’s efforts, to provide information to all stakeholders—the general public, homeowners and commercial building owners, lessees, lawmakers, the judiciary, elected officials, municipal leaders, community-based organizations, the building and construction industry, government agencies, and other stakeholders (the “Outreach Stakeholders”)—regarding the requirements and benefits of compliance with Applicable Laws and Regulations.

Finally, the Grant will have a decreased federal share over time, as the income generated by permitting and enforcement activities will be used to maintain staff and resources for a self-sustaining program, to ensure that the Government of Puerto Rico maintains compliance with Applicable Laws and Regulations and Codes, resulting in a more resilient and protected island.

## IV. Scope of Work and Services

### A. Overview of Services

The selected proponent will provide services to support an island-wide outreach and communications effort to ensure awareness and understanding of, affinity for, and participation in the efforts and objectives of the Grant among the Outreach Stakeholders. The community outreach activities will also aim to educate on the dangers of “informal” construction that does not meet the Applicable Laws and Regulations and the benefits of compliance with the permitting and inspection processes. Also, the community outreach services must inform all sectors of society of the penalties and security risks inherent in engaging “informal” construction activities.

The PRPB, its strategic team, and its project manager will provide strategy, direction, development, and assessment for this effort, which the selected firm will use to successfully implement and execute campaigns and other outreach and communications’ activities (as



described below).

Specifically, the successful Proponent will be engaged in the following program specific services:

- Provide customized media and public relations services that may include, but are not limited to:
  - interpreting and adapting the concepts and values outlined by the PRPB/project strategists into appropriate mass media messages to ensure the impact and reach of the project's target message
  - providing PRPB/project's strategists with data and recommendations on costs, reach, audience/segments, and specific value of different media formats/outlets for placement of campaigns
  - distributing media materials such as, background materials, press releases, speeches and presentations and press kits
  - executing media programs
  - preparing materials and handouts for scheduled press conferences, broadcast and/or print media interviews, etc.
  - conducting media alerts
  - press clipping services
  - other activities related to public relations services.
  
- Advertising services may include, but are not limited to:
  - disseminating information to industry and consumer advocacy groups
  - engaging in recruitment campaigns
  - working with the PRPB and PMO/project strategists to conduct advertising objective analysis
  - distributing messages
  - recommending media selections
  - conducting outdoor marketing and media services
  - procuring broadcast media (radio, TV, internet and public service announcements)
  - implementing direct mail services
  - supporting advertising evaluation
  - conducting other activities related to advertising services, promoting public awareness of the Grant's mission and initiatives, and enabling public understanding of complex technical and social issues
  
- Marketing and research support services, including but not limited to:

- jointly with the PRPB strategic team, interpret and adapt the conceptual guidelines outlined in the strategic plan into tactics and strategies of a feasible and executable marketing plan.
  - implementing creative concept alternatives aligned with the project's values to capture a definitive brand image and identity.
  - implementing creative materials aimed at fostering and raising the level of public awareness of products, services and issues identified by PRPB/project strategists
  - supporting target market identification and analysis
  - supporting the establishment and tracking of measurable marketing objectives aligned with the strategies and outreach expectations outlined in the project's communications plan
  - spotting and tracking market trends and conditions to guide the PRPB/strategic team's decision-making processes regarding adjustment to strategies or ad content
  - identifying and implementing appropriate marketing and advertising strategies
  - supporting PRPB/project's strategic team's research activities as needed such as focus groups; interviews; surveys; telemarketing; call centers
  - other activities related to marketing research and analysis services to deliver input to the PRPB/project's strategic team.
- Commercial photography services which may include, but are not limited to:
    - photography which may be used for commercial advertisements and/or illustrations that will appear in books, magazines, and/or other forms of media such as black and white photography, color photography, digital photography, aerial photography, architectural photography, field and studio photography.
  - Graphic design services may include, but are not limited to:
    - in consultancy with the PRPB/project's strategic team, implementing visual communications to convey specific messages or concepts, clarifying complex information, or project visual identities.
    - producing printed materials, packaging, advertising, signage systems, using corporate identification (logos).
    - providing commercial artists to generate drawings and illustrations requiring technical accuracy or interpretative skills (examples may include commercial art or special effects services that educate the consumer market about product(s) and/or service(s)).
    - with the PRPB/project's strategic team, developing conceptual design and layouts, creating sketches, drawings, publication designs, and typographic layouts.
    - furnishing custom or stock artwork (including electronic artwork)

- Video/film production services may include, but are not limited to:
  - writing, directing, and/or shooting
  - arranging for talent / animation, narration
  - music and sound effects
  - duplication and distribution
  - video scoring
  - video editing
  - outputs such as: industry standard formats, accessibility and video streaming development
  - filming in studios, on location, live shows or events
  
- Web-based marketing services may include, but are not limited to:
  - writing, modifying, testing, and supporting software to meet the needs of PRPB
  - website programming and maintenance services
  - search engine optimization implementation
  - email marketing implementation
  - interactive marketing
  - web based advertising implementation (including marketing and social media outlets)
  - webcasting
  - web-based video conferencing services
  - section 508 compliance, including captioning services
  - online media management

NOTE: media will be provided in a format that is compatible with the PRPB's software requirements. Continual website updates and maintenance may also be required.

- Conference, meeting, townhalls, and event planning services may include, but are not limited to:
  - organizing, promoting, and/or managing events, such as townhalls, conventions, conferences, and meetings (whether or not they manage and provide the staff to operate the facilities in which these events take place)
  - project management, coordination and implementation of third party participation.
  - liaison support with venue, audiovisual and information technology support
  - support for topic and speaker identification
  - site location research
  - reservation of facilities
  - on-site meeting and registration support
  - automation and telecommunications support
  - design and editing productions

- mailing and other communication with attendees including pre/post meeting mailings and computer database creation

**GENERAL NOTE:** Any commissions received for media placement, conference planning, etc. shall be applied as a credit to the Board under the contract.

## B. Proposed Direct Costs

Any proposed direct costs (PDCs) shall be clearly identified and defined in the proposal and must be directly related to the communications and outreach subcategory services described above. Any PDCs shall be an integral part of the total professional services solution and shall not be the primary purpose of the work. PDCs may include: funding for payment of media spots on television/radio/social media, conference meeting space, etc.

## C. Subcontracting of Services

The proponents shall be prepared to furnish a general list of all subcontractors that it intends to utilize for the Project. The Board requests that the selected proponent implement, at minimum, the affirmative steps listed in 2 CFR § 200.321 to use small and minority businesses, and women's business enterprises as subcontractors, where possible.

## V. Proponent Submittal Requirements

### A. Proponent Eligibility

To be eligible to submit a proposal under this RFP, proponents must comply with the following:

1. File a Letter of Intent. Proponents must submit a letter stating its intent to submit one or more proposals in response to this RFP ("Letter of Intent"). The Letter of Intent shall be in the format set forth in Appendix 7 and must be delivered to the Board by the deadline indicated on Table 1 of this RFP.
2. Must Demonstrate Ability to Meet Requirements. The proponent must clearly demonstrate its ability to fully meet all of the requirements of this RFP in its proposal.

### B. Legal Entities

All persons may participate in this RFP; however, proponents that are corporations,

partnerships, or any other legal entity, US mainland or Puerto Rico based, shall be properly registered to do business in Puerto Rico at the time of the submission of their proposal, and shall comply with all Applicable Laws and Regulations.

### C. Required Qualifications

Proponents to the RFP shall provide information in their proposals that demonstrates the following qualifications:

1. Respondent has adequate financial resources to perform the contract, or the ability to obtain them; financial statements for the previous 2 years or equivalent financial records must be included in the proponent's proposal. Proponents must also include documentation verifying they are not debarred or suspended from doing work with either the federal government or the Government of Puerto Rico.
2. Proponent can comply with an accelerated delivery and performance schedule.
3. Proponent has a satisfactory record of performance.
4. Proponent has a satisfactory record of integrity and business ethics.
5. Proponent has the necessary organizational, experience, accounting and operational controls, and technical skills to deliver the scope of services.
6. Neither the proponent, its principal members, nor any person or entity associated who is partnering with the proponent has been the subject of any adverse findings that would prevent PRPB from selecting the proponent. Such adverse findings include but are not limited to the following:
  - a. Negative findings from a federal Inspector General or from the US Government Accountability Office (GAO), or from an Inspector General in another state;
  - b. Pending or unresolved legal action from the US Attorney General or from an Attorney General in Puerto Rico or another state;
  - c. Pending litigation with the Government of Puerto Rico, or any other state;

- d. Arson conviction or pending case;
- e. Harassment conviction or pending case;
- f. Puerto Rico, federal, or private mortgage in arrears, default, or foreclosure proceedings;
- g. In rem foreclosure;
- h. Sales tax lien or substantial tax arrears;
- i. Fair Housing violations or current litigation;
- j. Defaults under any federal or Puerto Rico sponsored program;
- k. A record of substantial building code violations or litigation against properties owned and/or managed by respondent or by any entity or individual that compromises the respondent;
- l. Past or pending voluntary or involuntary bankruptcy proceedings; or
- m. Conviction for fraud, bribery, or grand larceny or any felony listed in the Puerto Rico Anticorruption Code of 2018.

#### D. Representations and Warranties of the Proponent

As may be applicable, the proponent represents and warrants that the following shall be true and correct as of the date of submittal of the proposal through the date of the contract and shall continue to be true and correct (as may be modified from time to time subject to Board approval) during the Term of the contract:

1. Financially Solvent. The proponent, and each of its subcontractors, is financially solvent, is able to pay all debts as they mature and is possessed of sufficient working capital to complete all services and perform all obligations under the proponent's proposal(s) and contract. The proponent also warrants that neither it nor any of its subcontractors owe any non-tax debt to the state or federal government.

Proponents should expect to be paid within 90 days of invoice acceptance. For

these reasons, proponents should demonstrate in their proposals that they have sufficient financial capacity to continue to pay all staff and subcontractors in a timely manner and continue to perform under any eventual contract with the PRPB without interruption or delay for at least that period of time. Proponent must include copies of audited financial statements or tax returns signed by the preparer for the three (3) previous fiscal years and the most recent quarterly report shall be provided. Financial Statements shall include auditor's letter of opinion, auditor's notes, balance sheet, and statement of income/loss. Each prime or joint venture partner shall submit this information. The Board reserves the right to accept alternative information and/or documentation submitted by proponents, provided that proponent includes a summary as to why the alternative information provided demonstrates the firm's financial capacity to pay employees and subcontractors even when awaiting payment of invoices under this engagement. If awarded a contract under this RFP, the proponent will certify in writing that the proponent will pay its employees and sub-contractors without regard to the timing of payment by the PRPB and the Government of Puerto Rico.

2. Minimum Contract Requirements; Conditions Required Under Federal and Puerto Rico Laws. By submitting a proposal under this RFP, proponent acknowledges and represents it is or will be able to comply with the minimum requirements in Appendices 9 and 10.

#### E. Conflicts of Interest

By the submission of a proposal, the proponent represents and warrants, for itself and each of its principal members (each, individually, a "Proponent Representative"), that:

1. No Proponent Representative, nor any of its partners, officers or employees is or has been an employee of the PRPB within two (2) years prior to the Proposal Due Date.
2. No officer, employee, assembly member of the PRPB nor any member of their respective family units, has any direct or indirect economic interest in this Project or any Contract therefor and that no officer, employee, advisor or consultant of the PRPB nor any member of their respective family units has any interest or participation in the economic benefits or earnings related to this Project.
3. No Proponent Representative, nor any of their partners, officers, employees, directors, associates, advisors or consultants nor any member of their respective family units has any conflict of interest related to the provisions and obligations

arising from this Project.

4. No Proponent Representative, nor any of its partners, officers, employees or directors has been convicted of or has pled guilty to any crime involving fraud, or misuse or misappropriation of public funds.
5. No Proponent Representative currently employs, or intends to employ, a public official or any member of his or her immediate family.
6. No Proponent Representative has achieved or may achieve an unfair competitive advantage in the procurement of the Project due to other activities or relationships with the PRPB or other persons or entities.
7. By the submission of its proposal, for itself and its respective employees, officers, board members and agents, that its participation in the RFP process and, if selected, its engagement by the PRPB to perform the obligations under a Contract would not result in violation of the applicable provisions of the Government Ethics Law or in either a personal or an organizational conflict of interest.

Any contract awarded under this RFP will preclude the selected proponent from representing before the PRPB any bidder other than those bidders or grantees who may be assigned under this contract during the period the contract is in effect.

Proponents are required to detail any other current or former advisory contracts the firm has/had with any entity of the GPR, or which bear any direct or indirect relation to the activities of the GPR. Further, provide a description of any recent historical or ongoing legal proceedings, interviews, or investigations being conducted by any US law enforcement agencies involving the respondent's firm or team that are related to transactions executed in or on behalf of the GPR, state agencies, and/or public corporations. In addition, provide a brief description of any work performed for any creditors or guarantors of the GPR, a state agency, and/or a public corporation debt about their positions in Puerto Rico debt obligations. Indicate whether this activity is ongoing, and if not, when the prior assignment concluded.

At some point in the selection process, the PRPB may request information on any perceived conflict of interest. Also, the PRPB may in the future request a list of direct or indirect relationships the firm or its professionals have with Board Members or executives of state agencies or public corporations. In the event of real or apparent conflicts of interest, the PRPB reserves the right, in the Government's best interest and at its sole discretion, to reject a proposal outright or to impose additional conditions upon proponents. The PRPB



reserves the right to cancel any contract awarded pursuant to this RFP with 30 days of notice if an actual conflict of interest, or the appearance of such conflict, is not cured to PRPB' satisfaction.

All existing (and prior, if involved in providing any of the proposed services) consultants, contractors, and subcontractors of the PRPB, P3 Authority and the COR3 are precluded from responding to this RFP. The PRPB considers that it is important to avoid any perceived and/or real unfair advantages or conflicts.

If any question of real or apparent conflict of interest should arise, the determination of the PRPB as to such question shall be final and binding. The PRPB reserves the right, in the event it determines that a conflict of interest would arise, to reject all or any portion of any proposal based on such conflict of interest.

#### F. Subcontractors

PRPB shall have a single prime contractor as the result of any contract negotiation. That prime contractor shall be responsible for all deliverables specified in this RFP and the selected proposal. This general requirement notwithstanding, proponents may enter into subcontractor arrangements. However, the proposal must acknowledge the proponent's responsibility for the entire scope of services.

If the proponent intends to subcontract for portions of the work, the respondent should identify any subcontractor relationship(s) and include specific designations of the tasks to be performed by the subcontractor(s). Information required of the respondent to the RFP shall also be required of each subcontractor. The prime contractor shall be the single point of contact for all subcontract work. The prime contractor shall pay the subcontractor(s); PRPB shall not be responsible for payment of any subcontractor. Unless provided for in the contract with PRPB, the prime contractor shall not contract with any other party for any services herein contracted without the express prior written approval of PRPB.

#### G. Required Documentation for Contract

All proponents are hereby advised that, if awarded a contract under this RFP, the chosen proponent will be required to provide the following documents and certifications prior to the execution of a contract:

- a. Puerto Rico General Services Administration
  - i. Certification from the *Registro Único de Profesionales* ("RUP")
- b. Puerto Rico Treasury Department

- i. Waiver for Income Withholding (if applicable)
- c. Other Documents
  - i. Photo identification of the person authorized to sign the contract
  - ii. Corporate Resolution or Sworn Statement authorizing the entity's representative to sign the contract
  - iii. Copy of professional license or certification (if applicable)
  - iv. Evidence of registration with [www.sam.gov](http://www.sam.gov)

## VI. Proposal Submittal Requirements

### A. Submission of Proposals

All proposals must be submitted electronically to the contact identified in Section II.B. No proposals will be accepted by any other means. Proposals submitted through any other means will be marked non-responsive. Proposals must be marked clearly with the proposal number, proposal name, and closing date and time in the submission email. Unidentifiable proposals will be marked non-responsive.

Submission of a proposal indicates acceptance by the proponent of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Board and the selected proponent. Proposals (including any attachments or appendixes (but excluding required appendices and financial statements) should not exceed 50 pages.

### B. Required Contents

All items in this RFP are considered essential parts of the proposal package. Submittals must include the package in its entirety, and all forms must be signed in the appropriate places by an authorized representative of the proponent. Proposals not including a complete, signed package will be considered non-responsive.

### C. Proposal Submittal Deadline or Proposal Due Date

The deadline for submittal of Proposals is set forth on the RFP Schedule in Table 1. It is the proponent's responsibility to have all proposal documents correctly submitted by the submittal deadline. No particular extensions will be granted, and no late proposals will be accepted. Any proposal received after the submittal deadline will be marked non-responsive.

Proponents are encouraged to submit their proposals as soon as complete. The time and

date of receipt as reflected in the time stamp on the email received through the Board's servers shall be the official time of receipt. PRPB is not responsible for late submission regardless of the reasons. Late proposals will not be considered under any circumstances.

#### D. Rejections, Alterations, or Withdrawals of Proposal Documents

Issuance of this RFP does not constitute a commitment by PRPB to award a contract. PRPB may accept or reject, in whole or in part, any or all proposals submitted and/or to cancel this solicitation and reissue this RFP or another version of it, if it deems doing so is in the best interest of the objectives of the Grant.

Any submitted proposal may be withdrawn, or a revised proposal submitted prior to the submittal deadline. Notice of withdrawal must be submitted in writing to the contact identified in Section II.A. Proposal documents may not be altered, amended (other than as provided in Section I.C), or withdrawn by the Proponent after the submittal deadline.

#### E. Validity of Proposal

Once the submittal deadline has passed, any proposal document shall constitute an irrevocable Proposal to provide the services set forth in the Scope of Services at the price(s) shown in the Proposal document. Such proposal shall be irrevocable until the earlier of the expiration of 180 days from the submittal deadline, or until a contract has been awarded by PRPB.

#### F. Costs of Preparing Proposal

All costs associated with preparing a response to the RFP are the sole responsibility of the proponent. PRPB shall not be liable for any costs incurred by the proponents prior to issuance of or entering into a contract. Costs associated with developing the proposal, preparing for an oral presentation or interview, and any other expenses incurred by the respondent to the RFP are entirely the responsibility of the respondent and shall not be reimbursed in any manner by PRPB.

#### G. Federal Grant Requirements

The awarded contract may be funded indirectly in part with FEMA funding. As such, the funds are governed by FEMA rules and regulations, including local, state and federal laws, regulations and directives; and 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The selected proponent must be knowledgeable of the allowable costs for this funding stream in order to avoid the

potential for disallowed costs. Proponent, by submitting a proposal, acknowledges and accepts that all applicable local and federal contract provisions will be included in any contract with the Board, including but not limited to provisions found at 2 CFR Part 200 and Appendix II to Part 200.

Any funds disallowed by any federal grantor shall be disallowed from fee or compensation to the selected Proponent. Accordingly, Proponents shall comply with all applicable federal requirements during their participation in this RFP, including all requirements set forth in 2 CFR, Part 200, which clearly outline methods of procurement to be followed by non-federal entities, in addition to following all applicable requirements of Puerto Rico laws and regulations.

#### H. Ownership of Proposal

All materials submitted in response to this RFP shall become the property of PRPB. The PRPB may use any proponent's proposal material in any legal manner, including the public disclosure of such information. Selection or rejection of a proposal does not affect this provision.

#### I. Proprietary Data and Confidentiality

The PRPB shall have no obligation to treat any information submitted in connection with a proposal as proprietary or confidential unless (i) the proponent clearly so identifies such information in its proposal as proprietary or confidential, and (ii) the PRPB determines that the information is proprietary or a trade secret and legitimately requires such treatment or that it must otherwise be protected from publication according to law. The PRPB's obligations with respect to protection and disclosure of such information shall always be subject to Applicable Law and Regulations. If the proponent desires to identify any information in its proposal as proprietary or confidential, it shall limit such designation to only those portions of the proposal that actually constitute proprietary information, trade secrets, or other confidential matters or data. Identification of the entire proposal or entire sections of the proposal or other overly broad designations as confidential or proprietary are strongly discouraged. The PRPB will consider in its evaluation any attempt by the proponent to designate any such material as proprietary or confidential or to otherwise include overly-broad designations of portions of its proposal.

The PRPB shall have the right to use all portions of the proposal, other than those portions identified and marked as confidential or proprietary, as it considers necessary or desirable in connection with the Project; and, by the submission of the proposal, the proponent thereby grants to the PRPB an unrestricted license to use such unrestricted portions of the

proposal.

## VII. Small and Minority-Owned Businesses, Women's Business

In accordance with 2 CFR § 200.321, it is the policy of the Government of Puerto Rico and PRPB to stimulate growth of local minority and women-owned business enterprises (M/WBE) by encouraging their participation in all phases of its contract and procurement activities and by affording them the opportunity to compete in all PRPB contracts. The purpose and objectives of this policy is to:

1. Increase the capacity of local M/WBE firms to provide products and services.
2. Increase the opportunities for local M/WBE firms to expand their business with PRPB and other public and private sector business entities.

Provided, however nothing herein shall require PRPB to award contracts for services or procurements to a M/WBE which is not also the most responsive and responsible proponent and otherwise qualified.

## VIII. Proposal Format

The proponent's proposal shall be formatted according to this section. Failure to follow this format will result in the proposal being marked non-responsive.

### A. Cover Letter and Table of Contents

Provide a cover letter that includes certification that the information submitted, and the contents of the proposal are true and accurate, and that the person signing the cover letter is authorized to submit the proposal on behalf of the proponent. Clearly identify the designated contact person for the engagement. Provide a table of contents that clearly identifies the location of all material within the Proposal by section and page number.

### B. Qualifications and Experience

The PRPB seeks proposals from responsible and qualified public relations, marketing and/or advertising firms that have substantial experience in communications/advertising campaigns or community outreach programs to expeditiously provide implementation services to support an island-wide outreach and communications effort to ensure awareness

and understanding of, affinity for, and participation in the efforts and objectives of the Grant among the Outreach Stakeholders. Proponents should describe their years of experience and qualifications to provide the required services throughout Puerto Rico and across different sectors of the Puerto Rican society, including the Outreach Stakeholders, to effectively inform the requirements and benefits of compliance with Applicable Laws and Regulations.

Experience and expertise in the areas identified in the scope of work and services in Section IV is essential.

Detail at least two (2) similar engagements and/or experiences with private and/or public-sector clients that demonstrate that the Proponent can provide the requested services to a high standard of quality. Each example must include:

1. Name of client organization
2. Description of the engagement or experience and objectives of the project, including beginning and ending dates
3. Information regarding the project that would demonstrate successful experiences by the client, because of the recommendations provided by the proponent. This may include performance metrics and improvements
4. If the example involves a private-sector client, describe how the experience could be applied to the public sector.

PRPB may seek information from references regarding subjects that include, but are not limited to, the quality of the service(s) provided, the anticipated ability of the proponent to perform the services required by this RFP, and the responsiveness of the proponent to the client during the engagement. Provide at least three (3) references for the proponent by completing the reference information form included in the Appendix 3 (does not count towards page limit) and ensuring that each reference complete and submits a reference questionnaire using the form included in the Appendix 5. Proponents will be evaluated on three (3) completed reference questionnaires. The completed reference questionnaires must be from individuals, companies, or public entities with knowledge of the proponent's experience that is similar in nature and scope to the services being requested by the RFP. References should be from current projects or projects completed within the last three (3) years from the date of the RFP. PRPB's inability to contact a reference will not be viewed favorably. References which are not received prior to the proposal submission deadline will receive a score of zero (0) for that reference. References outside the three (3) years will

also receive a score of zero (0) points.

Provide a summary of the proponent's technical expertise that describes the respondent's unique capabilities. This narrative should highlight the respondent's ability to provide the requested services. Provide biographical summaries for key individuals and their proposed roles. (Complete resumes may be attached to the proposal and will not count towards the page limit.)

In addition, identify any potential sub-contractors and local parties incorporated into the team and clearly explain their expertise, expected role, and value to the engagement. Specify the primary contact person for the proponent (name, title, location, telephone number, and email address), and the anticipated availability of the proponent's primary contact person for the anticipated life cycle of the Project.

### C. Approach and Methodology

Please explain your process for implementing the various activities as outlined in Section IV specific to an island-wide educational outreach campaign to ensure receptiveness to the general public and Outreach Stakeholder group, demonstrating knowledge of Puerto Rico media, advertising, and marketing opportunities and challenges.

Explain how specific tactics and channels will support various audiences to be targeted in the campaign, and provide examples of how successful public information or educational campaigns have achieved success by using these approaches. Each example must contain enough information for the Evaluation Committee to ascertain the success of the projects accomplished by the proponent. This section must include an acknowledgment that, if selected, the proponent can respond with capacity for these efforts and the proposed key individuals and must stipulate the time required for project initiation.

Identify existing staff that will be involved in the project, including each staff member's proposed role in the project's organization, their relevant qualifications, and the allocation of their time to this engagement. Provide an organizational chart for your team with the designation of primary leadership and day-to-day professionals.

Describe the proponent's approach to manage and evaluate performance and proposed report submittals. Additionally, please describe available electronic formats (Web download, CD, etc.) for providing performance information to the Board for the proposed services.

Proponents must include a project plan and deployment schedule with proposed schedule

if awarded the contract.

#### D. Cost Proposal and Pricing Methodology

Proponents shall provide a Cost Proposal. Proponents may, but are not required to, use the sample form attached Appendix 2. It is mandatory for all proposals to include a Cost Proposal. Failure of a proponent to include a Cost Proposal will result in automatic disqualification of the proposal.

An hourly rate schedule for the delivery of services, by category of the professionals required to deliver the scope of work and services. All hourly rates shall include overhead and proponent's profit. The rates provided by the proponent shall be guaranteed for the performance period of the contract.

The Board will not reimburse costs related to office materials, photocopies, scanners, stamps, messengers, fax transmissions, telephone calls or similar costs.

Proponents shall separately identify all federal and state taxes, fees and surcharges that apply to the proposed services and any Proposed Direct Costs (as described in Section IV.B). If a tax, charge or cost is based on a specific percentage, include an estimate of the total charges based on the applicable percentage. Proposal pricing shall be subject to the following terms and conditions:

1. Best Proponent Rates. Proponents are expected to propose their very best prices and to the extent possible, reflect any anticipated price reductions from technology advancements and/or marketplace efficiencies in their pricing.
2. Firm Price Commitment. Each proponent agrees that its pricing shall remain firm and effective for 180 days from the date of submission.
3. Discounts. Proponent should clearly identify any education or other discounts being offered to the Board and are required to apply said discount before entering line item pricing on the price proposal.
4. No Minimum Service Commitment. Proponent pricing may not be subject to, or contingent upon, a minimum service commitment by the Board.

#### E. Commitment to Compliance with all Applicable Federal and Puerto Rico Regulations

Proponents shall explain their adherence and commitment to complying with all applicable



federal and Puerto Rico laws and regulations. Indicate what characteristics of the proposed team set them apart in terms of commitment to comply with all applicable laws and requirements. Indicate the specific trainings and expertise that reside within the team that reinforces the commitment to compliance.

#### F. Proposal (Bid) Bond

Proponents are required to include a proposal (bid) bond with their proposal, which bid bond(s) shall be in an amount equal to One Hundred Thousand Dollars (\$100,000.00). The proposal (bid) bond may be in one of the following formats:

- A bid bond issued by a surety company authorized to do business in the Commonwealth of Puerto Rico; The surety company must be included in the latest Federal Register (Circular 570) as accepted by the Federal Government.
- An irrevocable letter of credit issued by a financial institution authorized to do business in the Commonwealth of Puerto Rico, or
- A money order, cashier's check or certified check issued to the Commonwealth of Puerto Rico Secretary of Treasury.

**Proponents who fail to include a proposal (bid) bond with their proposal shall automatically be disqualified from consideration for a contract award.** This omission cannot be cured. The Evaluation Committee shall notify proponents disqualified for failure to comply with this requirement, and shall indicate the disqualification in the Notice of Intent to Award as the reason said proponent was not considered for a contract award by the Evaluation Committee.

#### G. Designation of Subcontractors

Any proponent that intends to use one (1) or more subcontractors to deliver all or part of the proposed services shall include a completed Designation of Subcontractors Form attached hereto as Appendix 6, identifying all subcontractors the proponent intends to use, describe their experience and skills, and the percentage of work the proponent expects each subcontractor to perform for each service.

#### H. Certificate of Insurance Coverage

The Contractor must purchase and maintain without interruption 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 by the Contractor, its agents, representatives, employees or subcontractors, or anyone employed directly or indirectly by any of them. The duration of the contract should be from the inception of the contract until the date of final payment. This insurance shall be endorsed to include the following policy forms:

1. **Commercial General Liability Insurance**

Commercial General Liability Insurance must include limits of not less \$300,000 per occurrence and \$1,000,000 in the aggregate for this coverage. Coverage shall be for each occurrence and shall include, but not be limited to: all operations, contractual liability, independent contractors, products/completed operations. Defense and legal costs shall not erode the Per Occurrence or Aggregate Limits.

2. **Additional Insured Clause**

All insurance policies with the exception of Workers Compensation and Professional Liability shall include the, the Commonwealth of Puerto Rico, the Puerto Rico Planning Board, its officers, agents, servants, employees and volunteers as an additional insured.

3. **Additional Provisions**

The following additional provisions are required:

- Waiver of Subrogation on all policies, except Workers Compensation and Professional Liability
- For any claims related to this project, the Contractor's insurance shall be primary
- Contractor agrees to have and maintain the policies as set forth and described herein
- The insurance obligations under this agreement shall be 1) all insurance coverage and/or limits carried by the contractor or 2) the minimum coverage required, whichever is greater
- Hold Harmless and Indemnification Agreement
- 90 Days' Notice of Cancellation, of Material Change or Non-renewal, including Non-Payment of Premium
- Cancellation of coverage for any reason does not release the Contractor from fulfilling its obligations under the Contract.
- Neither the acceptance of the completed work nor the payment thereof shall

release the Contractor from the obligations of the insurance requirements or indemnification agreement

- The insurance companies issuing the policies shall have no recourse against the Commonwealth of Puerto Rico, the Puerto Rico Planning Board, its officers, agents, servants, employees and volunteers

#### I. Disclosure of Recent Legal Actions

List, and briefly describe any and all legal actions and any judgments entered in the past three (3) years in which the proponent has been a debtor in bankruptcy, a defendant in a lawsuit for deficient performance under a contract or agreement; a party in an administrative action for deficient performance or a defendant in a criminal action. Proponents must also identify any lawsuits or other legal proceedings and any judgments against them, which directly or indirectly relate to any of the services included in their corresponding proposal in the past five (5) years. Indicate if proponent has not been involved in any legal actions described above.

The proponent disclosure statement should be dated and signed by an authorized proponent representative, and include the following representation:

“The undersigned, after reasonable inquiry and investigation, has no knowledge of any action, suit, proceeding, or material claim or investigation pending or threatened against [name of proponent] in any court, or by or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, or before any arbitrator of any kind, that, if adversely determined, would materially affect [name of proponent]’s ability, or the ability of its subcontractor(s), to perform the services described in its proposal at the prices set forth in its price proposal.”

#### J. Non-Collusion Affidavit

Proponents must include the Non-Collusion Affidavit attached to this RFP as Appendix 4, with their proposals, certifying, among other things, that the proponent has not directly or indirectly induced or solicited any other proponent to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any proponent or anyone else to put in a sham proposal. The failure of a proponent to include the Non-Collusion Affidavit shall result in the automatic disqualification of the proponent from further consideration for a contract award.

#### K. Joint Venture (if applicable)

Any proponent submitting as a joint venture must also include a copy of the executed joint venture agreement with its proposal.

#### L. Corporate Resolution

If the proponent is a corporation, the proposal must be signed by an officer of the corporation and be accompanied by a corporate resolution authorizing the individual to sign the proposal and to enter into a contractual agreement on behalf of the corporation. The corporate resolution must also specify the state of incorporation. Unsigned proposals and proposals not properly signed or accompanied by the appropriate corporate resolution will be rejected.

#### M. Lobbying Certification

Proponent shall submit Appendix 8, Lobbying Certification for Contracts, Grants, Loans, And Cooperative Agreements, with its RFP documents. The failure of a proponent to include this certification shall result in the automatic disqualification of the proponent from further consideration for a contract award.

#### N. Neutrality

The proponent shall attest to being neutral in software, hardware and other consulting relationships. Specifically, the proponent is attesting they are not a reseller of another contractor's services and do currently or have plans to receive financial compensation from other contractors.

#### O. Required Forms (Appendix)

No portion of the forms contained in the Appendices shall count towards the page limit of the proposal.

### IX. Evaluation Committee and Proposal Review

This section describes the overall proposal and selection process that the Board intends to follow with respect to this RFP.

#### A. Evaluation Committee

The PRPB will appoint a qualified Evaluation Committee to review the Proposals submitted by Proponents (the "Evaluation Committee") with representatives from PRPB.

The Evaluation Committee will evaluate and rank the Proposals received pursuant to this RFP in accordance with the criteria set forth below. The Evaluation Committee may be assisted by a team of technical, legal and financial advisers and such other resources as the committee deems helpful and/or appropriate.

Following review of all proposals received, the Evaluation Committee may, but is not required to, request individual interviews with Proponents determined to be in the competitive range. The competitive range will include those proponents who, after evaluation and scoring of their proposals, appear to have the greatest potential to satisfy the terms and conditions of the RFP. The purpose of these interviews will be for the Evaluation Committee to meet the staff of the proponent who would be assigned to manage this Project, clarify their proposal, and negotiate fees.

Time is of the essence in conducting the proposal evaluations. The Evaluation Committee will score each proposal and rank them in descending order. If there is no need to conduct discussions or negotiations with the top ranked proponent, the PRPB may award a contract without discussions.

## B. Completeness

A proposal must be complete or will be rejected. If the proposal is incomplete or otherwise fails to conform to the requirements of the RFP, or if the variance from the requirements is so significant as to render the Proposal non-responsive, the Proposal will be rejected as non-responsive. All proposals deemed complete and meeting the Proposal submission requirements will be evaluated.

Any ambiguity in the proposal because of omission, error, lack of clarity, or non-compliance by the proponent with specification, instructions, and all conditions shall be construed in the favor of PRPB.

## C. Nonmaterial and Material Variances

The PRPB reserves the right to waive or permit cure of nonmaterial variances in the bid proposal if, in the judgment of PRPB, it is in PRPB's best interest to do so. Nonmaterial variances include minor informalities that do not affect responsiveness; that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other proponents; that do not change the meaning or scope of the RFP; or that do not reflect a material change in the services. In the event PRPB waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the proponent from full compliance with RFP specifications or other contract requirements if

the proponent is awarded the contract. The determination of materiality is in the sole discretion of PRPB.

#### D. No Price Adjustments

It is expected that the prices submitted shall remain firm for 180 days from the date of the proposal, and that the prices set forth in the approved contract shall remain firm for the entire contract performance period.

#### E. Additional Information

PRPB may request any other information necessary to determine the proponent's ability to meet the minimum standards required by this RFP.

#### F. Single Proposal Response

If only one proposal is received in response to this RFP, a detailed cost proposal may be requested of the single proponent. A cost/price analysis and evaluation and/or audit will be performed of the cost proposal to determine if the price is fair and reasonable, in accordance with 2 CFR § 200.404.

#### G. Disqualification

The PRPB may reject proposals outright for any one of the following reasons, or for other reasons not specified below:

- The proponent fails to deliver the bid proposal by the due date and time.
- The proponent fails to include information necessary to substantiate that it will be able to meet a service requirement. A response of "will comply" or merely repeating the requirement is not sufficient. Responses must indicate present capability and/or cite evidence of past fulfillment of similar requirements; representations that future developments will satisfy the requirement will not be considered sufficient.
- The proponent provides misleading or inaccurate responses.
- The proponent fails to respond to the Board's request for information, documents, or references.

- The proponent fails to include any signature, certification, authorization, stipulation, disclosure, certification, affidavit or guarantee requested by this RFP.
- The proponent presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.
- The proponent initiates unauthorized contact regarding the RFP with PRPB members, employees or consultants.

**H. Evaluation Criteria**

Each responsive proposal meeting all submission requirements will be independently evaluated by the Evaluation Committee, which will assign a score for each evaluation criteria up to the maximum points identified in Table 2.

*Table 2 – Evaluation Criteria’s*

CRITERIA	MAXIMUMS POINTS
<p><b>Qualifications and Experience</b></p> <ul style="list-style-type: none"> <li>• Firm’s financial strength and solvency</li> <li>• Previous experience (at least five (5) years) with similar projects</li> <li>• Detail of two (2) similar engagements (at least one in managing a large public project)</li> <li>• Availability to start immediately</li> <li>• Background check (at least three (3) reference questionnaires)</li> </ul>	40 points
<p><b>Approach and Methodology</b></p> <ul style="list-style-type: none"> <li>• Evaluate proposal’s approach for performance management, reporting and KPIs</li> <li>• Key roles and key executives (including engagement manager and key workstream leaders)</li> <li>• Demonstrating knowledge of Puerto Rico’s media, advertising, and marketing opportunities and challenges</li> <li>• Proposed project implementation plan</li> </ul>	20 points
<p><b>Cost Proposal and Pricing Methodology</b></p> <ul style="list-style-type: none"> <li>• Includes hourly rate schedule by category</li> </ul>	30 points

CRITERIA	MAXIMUMS POINTS
<ul style="list-style-type: none"> <li>Rates guaranteed for the entire contract period</li> </ul>	
<b>Commitment to Complying with all Applicable Federal and Puerto Rico Regulations</b>	
<ul style="list-style-type: none"> <li>Experience with FEMA regulations; Puerto Rico laws and regulations applicable to the proposed services</li> <li>Adherence to strong ethical and integrity practices and an unequivocal commitment to solid administrative practices</li> </ul>	10 points
<b>Total</b>	<b>100 points</b>

**I. Selection of Finalist Proponents; Oral Presentations**

The Board may, at its sole discretion, invite up to five (5) or less finalists whose proposals best meet the Board’s needs and the requirements of this RFP to participate in oral presentations and portfolio demonstrations. Invited proponents should be prepared to present such information as may be needed for the Evaluation Committee and selected Board personnel and representatives to effectively analyze proposed services described in this RFP. Proponents invited for oral presentations must be represented by the individual who is able to legally bind the proponent and is expected to serve as the prime contact person to the Board, along with other key project team members including (a) technical specialists, (b) subcontractors expected to deliver material services under the proposal, and (c) such other individuals intended to perform essential components of the proposal and that are qualified to answer questions about the proponent’s proposal. A proponent’s inability to respond to any request for clarification by the PRPB and/or participate in an oral presentation may be disqualified from further consideration of a contract award.

Oral presentations will consist of an overview of the submitted proposal of each of the invited proponents and detailed discussions regarding proposed services. Additional proponent presentations may also be requested and scheduled, at any time by the Board. Demonstrations are expected to include demonstrations of compliance tracking and reports.

An invitation to a proponent for an oral presentation is not a guarantee that a contract will be awarded to the proponent.

**J. Best and Final Offers and Negotiations**

The Board may request the submission of best and final offers from the finalist proponents.



The request for best and final offers shall be in writing and shall establish a common date and time for the submission. Proponents shall be informed that if they do not submit a best and final offer or a notice of withdrawal, their immediate previous offer will be construed as their best and final offer. Best and final offers shall be evaluated by the Evaluation Committee; provided, however, the Evaluation Committee may make a written determination that it is in the Board's best interest to conduct additional negotiations with one (1) or more of the finalist Proponents for purposes of determining the final offer of any such finalists. An invitation to a proponent to enter into negotiations or submit a best and final offer or further negotiations is not a guarantee the proponent will be awarded a contract.

#### K. Other Considerations

In general, the PRPB also may consider, without limitation, any of the following issues when determining whether a Proponent is qualified to undertake the Project:

1. Whether the Proposal complies with the PRPB 's objectives and the RFP;
2. The Proponent's reputation and commercial integrity, including its record of compliance with previous public and private clients;
3. Any other applicable condition of the RFP or Applicable Law and Regulations.

#### L. Most Advantageous Proposal

The PRPB intends to select for award the responsive proponent whose proposal is determined to be most advantageous to the PRPB and the Project, with price and other factors considered.

#### M. Board's Selection

Following the completion of the evaluation process, the Evaluation Committee will recommend to the PRPB at least one qualified proponent that submits a responsive proposal for the most advantageous proposal that will meet the Board's needs. The PRPB will review the recommendation to ensure its compliance with the RFP process and criteria before concurring with the Evaluation Committee's recommendation.

#### N. Notice of Intent to Award

A Notice of Intent to Award (“NIA”) shall be sent to the selected proponent(s). The NIA may include a summary of all proponents’ pricing, the Evaluation Committee’s voting record, the reasons that justified the selection of the proponent, the reasons losing proposals were not selected (including any proponent disqualifications), and such other information as shall be deemed necessary or appropriate by the Evaluation Committee. Copies of the NIA shall also be sent to all other proponents that submitted proposals in response to this RFP. The selected proponent must, within five (5) calendar days return a signed copy of the NIA to the Board indicating acknowledgement and acceptance of their selection.

The NIA is subject to execution of a written contract and, as a result, such NIA does not constitute the formation of a contract between the Board and the selected proponent. The proponent shall not acquire any legal or equitable rights relative to the services contract until an actual binding contract containing terms and conditions acceptable to the Board is executed. If the selected proponent fails to negotiate and execute a contract with the Board, the Board may revoke the NIA and award the contract to the next highest ranked proponent or withdraw the RFP. The Board further reserves the right to cancel the NIA at any time prior to the execution of a written contract.

#### O. Partial Contract Award

PRPB reserves the right to award one (1) contract for some or all of the services proposed or award multiple contracts for various portions of the scope of work to different proponents based on the prices proposed in response to this RFP, or to reject any and all proposals and re-solicit for proposals, as deemed to be in the best interest of PRPB and the Government of Puerto Rico.

If awarded a contract, the selected proponent will be required to accept the award in writing within five (5) calendar days of the award and execute a contract containing, among other things, the General Terms and Conditions set forth in Appendix 2 of this RFP. In the event the proponent and the Board fail to reach an agreement as to the terms and conditions of the contract, the selected proponent’s award of the contract shall be revoked by the Board, and the Board may negotiate a contract with one (1) or more of the other proponents.

#### P. Post-award Protest Procedures

Post-award reconsideration and judicial review procedures are governed by PR Act No. 38 of 2017 known as the Uniform Administrative Procedures Act of the Government of Puerto Rico, 3 L.P.R.A. sec. 9601, *et seq.*

## Appendix 1

### Cover Page

<b>RFP Number:</b>	<b>RFP-2021-001</b>		
<b>Project Title:</b>	Advertising, Marketing and Communications Implementation Services		
<b>Submittal Deadline:</b>	<b>1200 AST, July 13<sup>th</sup>, 2021</b>		
<b>Submit via email to:</b> Puerto Rico Planning Board Attention: Manuel A.G. Hidalgo Rivera – Chairman of the Board <a href="mailto:rfp@jp.pr.gov">rfp@jp.pr.gov</a>			
<b><u>Proponent Information:</u></b>			
<b>Proponent's Legal Name:</b>			
<b>Mailing Address</b>			
<b>City, State &amp; Zip</b>			
<b>Federal Employer ID No.:</b>			
<b>Phone Number:</b>		<b>Fax Number:</b>	
<b>E-Mail Address:</b>			

The undersigned, doing business under the full and complete legal name as set forth above, proposes to provide the services described in the proposal to the Puerto Rico Planning Board, for the prices set forth in the Proponent's Price Proposal. The Proponent makes the following certifications with regard to its service and pricing proposals:

1. Proponent is presenting its proposal for the RFP No. RFP-2021-001
2. Proponent certifies that it has filed all its income tax forms and paid all its taxes (including property taxes), unemployment insurance, disability, and chauffeurs social security, in all applicable cases; or, that it has a payment plan for payment of those obligations and is complying with such plan.
3. Proponent certifies that there is no conflict of interest in the contract and provisioning of the

proposed services and items to the Board.

4. Proponent agrees that its service proposal and price proposal shall remain valid for 180 days from the date of submission.
5. Proponent certifies that none of the employees of the Board or any of its sub-departments or agencies has a pecuniary interest in their offer.
6. Proponent certifies that its proposal has been prepared and developed without collusion with any of the Board's officials or other Proponents and without effort to preclude the Board from obtaining the best competitive proposal.
7. Proponent certifies that the Proponent nor any person or entity associated who is partnering with the Proponent has been the subject of any adverse findings that would prevent THE BOARD from selecting the respondent. Such adverse findings include but are not limited to the following:
  - a. Negative findings from a federal Inspector General or from the US Government
  - b. Accountability Office (GAO), or from an Inspector General in another state;
  - c. Pending or unresolved legal action from the US Attorney General or from an
  - d. Attorney General in Puerto Rico or another state;
  - e. Pending litigation with the Government of Puerto Rico, or any other state;
  - f. Arson conviction or pending case;
  - g. Harassment conviction or pending case;
  - h. Puerto Rico, federal, or private mortgage in arrears, default, or foreclosure proceedings;
  - i. In rem foreclosure;
  - j. Sales tax lien or substantial tax arrears;
  - k. Fair Housing violations or current litigation;
  - l. Defaults under any federal or Puerto Rico sponsored program;

- m. A record of substantial building code violations or litigation against properties owned and/or managed by respondent or by any entity or individual that compromises the respondent;
- n. Past or pending voluntary or involuntary bankruptcy proceedings; or
- o. Conviction for fraud, bribery, or grand larceny or any felony listed in the PR Anticorruption Code of 2018.

**Proponent Authorization**

I, \_\_\_\_\_, the undersigned, have the authority to execute this Proposal in its entirety as submitted and enter into a contract on behalf of the Proponent.

Printed Name of Authorized Representative: \_\_\_\_\_

Position: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Signed this \_\_\_\_ (day) of \_\_\_\_\_ (month), \_\_\_\_ (year)

**[The remainder of this page intentionally left blank.]**

## Appendix 2

### Sample Cost Proposal Form

**PROPONENT IS REQUIRED TO DISCLOSE ANY EXCEPTIONS TO THE SERVICES, AND MUST CLEARLY SPECIFY ALL EXCEPTIONS AND LIST THE SEPARATE COSTS IN THE PROPONENT'S PRICING PROPOSAL. ANY PROPONENT THAT FAILS TO SUBMIT PRICE PROPOSAL SHALL BE AUTOMATICALLY DISQUALIFIED FROM CONSIDERATION FOR AN AWARD.**

CATEGORY/ITEM	HOUR/UNIT	PRICE
<b>TOTAL (MUST INCLUDE PRICING FOR ALL LINE ITEMS):</b>		

**[The remainder of this page intentionally left blank.]**

### Appendix 3

#### Reference Form

<b>Client Organization Name:</b>	
<b>Contact Name:</b>	
<b>Contact Title:</b>	
<b>Contact Phone:</b>	
<b>Contact Email:</b>	
<b>Engagement Begin and End Dates:</b>	
<b>Description of Engagement or Experience:</b>	
<b>Examples of Recommendations and Results:</b>	
<b>Recommendation Success Demonstration:</b>	
<b>Description of Federal Funds Managed:</b>	
<b>Key Programs or Projects Advanced During Engagement:</b>	

<b>Client Organization Name:</b>	
<b>Contact Name:</b>	
<b>Contact Title:</b>	
<b>Contact Phone:</b>	
<b>Contact Email:</b>	
<b>Engagement Begin and End Dates:</b>	
<b>Description of Engagement or Experience:</b>	
<b>Examples of Recommendations and Results:</b>	
<b>Recommendation Success Demonstration:</b>	
<b>Description of Federal Funds Managed:</b>	

<b>Key Programs or Projects Advanced During Engagement:</b>	
<b>Client Organization Name:</b>	
<b>Contact Name:</b>	
<b>Contact Title:</b>	
<b>Contact Phone:</b>	
<b>Contact Email:</b>	
<b>Engagement Begin and End Dates:</b>	
<b>Description of Engagement or Experience:</b>	
<b>Examples of Recommendations and Results:</b>	
<b>Recommendation Success Demonstration:</b>	
<b>Description of Federal Funds Managed:</b>	
<b>Key Programs or Projects Advanced During Engagement:</b>	

<b>Client Organization Name:</b>	
<b>Contact Name:</b>	
<b>Contact Title:</b>	
<b>Contact Phone:</b>	
<b>Contact Email:</b>	
<b>Engagement Begin and End Dates:</b>	
<b>Description of Engagement or Experience:</b>	
<b>Examples of Recommendations and Results:</b>	
<b>Recommendation Success Demonstration:</b>	
<b>Description of Federal Funds Managed:</b>	
<b>Key Programs or Projects Advanced During Engagement:</b>	



<b>Client Organization Name:</b>	
<b>Contact Name:</b>	
<b>Contact Title:</b>	
<b>Contact Phone:</b>	
<b>Contact Email:</b>	
<b>Engagement Begin and End Dates:</b>	
<b>Description of Engagement or Experience:</b>	
<b>Examples of Recommendations and Results:</b>	
<b>Recommendation Success Demonstration:</b>	
<b>Description of Federal Funds Managed:</b>	
<b>Key Programs or Projects Advanced During Engagement:</b>	

<b>Client Organization Name:</b>	
<b>Contact Name:</b>	
<b>Contact Title:</b>	
<b>Contact Phone:</b>	
<b>Contact Email:</b>	
<b>Engagement Begin and End Dates:</b>	
<b>Description of Engagement or Experience:</b>	
<b>Examples of Recommendations and Results:</b>	
<b>Recommendation Success Demonstration:</b>	
<b>Description of Federal Funds Managed:</b>	

<b>Key Programs or Projects Advanced During Engagement:</b>	
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Appendix 4

Non-Collusion Affidavit

EACH PROPONENT IS REQUIRED TO SUBMIT A NON-COLLUSION AFFIDAVIT WITH ITS PROPOSAL. ANY PROPONENT THAT FAILS TO SUBMIT A NON-COLLUSION AFFIDAVIT SHALL BE AUTOMATICALLY DISQUALIFIED FROM CONSIDERATION FOR AN AWARD.

I, the undersigned, am the \_\_\_\_\_ of \_\_\_\_\_ (the "Proponent"), and being duly sworn, declare that the proposal submitted by the Proponent in response to RFP No. 2021-001 is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the proponent has not directly or indirectly induced or solicited any other proponent to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any proponent or anyone else to put in a sham proposal; that the proponent has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proponent or any other proponent, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proponent, or to secure any advantage against the government of the Commonwealth of Puerto Rico or the Puerto Rico Planning Board; that all statements contained in the proposal are true; and, further, that the Proponent has not, directly or indirectly, submitted its proposal price or any breakdown thereof,, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

I certify (or declare) under penalty of perjury under the laws of the Commonwealth of Puerto Rico that the foregoing is true and correct.

Name of Proponent: \_\_\_\_\_
Signature: \_\_\_\_\_
Name: \_\_\_\_\_
Title: Date: \_\_\_\_\_

NOTARY PUBLIC SEAL

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, proved to me on the basis of satisfactory evidence \_\_\_\_\_ to be the person who appeared before me and signed this Affidavit.

## Appendix 5

### **REFERENCE QUESTIONNAIRE - INSTRUCTIONS TO THE PROPONENT**

Proponents will be evaluated on three (3) completed reference questionnaires. The completed reference questionnaires must be from individuals, companies, or public entities with knowledge of the Proponent's experience that is similar in nature and scope of services being requested by the RFP. References should be from current projects or projects completed within the last three (3) years from the date of the RFP.

References which are not received prior to the proposal response due date and time will receive a score of "0" for that reference. References outside the three (3) years will also receive a score of zero (0) points.

If more than three (3) qualifying references are received prior to the proposal due date, the three (3) references with the highest scores will be used in the evaluation.

### **REFERENCES MUST BE RECEIVED BY THE BOARD DIRECTLY FROM THE REFERENCE IN ORDER TO BE CONSIDERED**

1. Proponents must complete the information on the next page before sending it to the Reference for response.
  - Print the name of your reference (company/organization) on the "REFERENCE NAME" line.
  - Print the name of your company on the "PROPONENT NAME" line. Send the "Reference's Response To" document to your references to complete and submit.

NOTE: It is the proponent's responsibility to follow up with its references to ensure timely receipt of all questionnaires. Proponents may contact the PRPB as described in Section II prior to the RFP closing date to verify receipt of references.

**[The remainder of this page intentionally left blank.]**

**REFERENCE QUESTIONNAIRE COVER PAGE**

**REFERENCE NAME** (Company/Organization): \_\_\_\_\_

**PROPONENT NAME** (Company/Organization): \_\_\_\_\_ intends to submit a proposal to Puerto Rico Planning Board in response to the Board’s RFP program management services.

**INSTRUCTIONS TO INDIVIDUAL COMPLETING REFERENCE QUESTIONNAIRE:**

1. Complete **Section I. RATING** using the Rating Scale provided.
2. **Complete Section II. GENERAL INFORMATION** (This section is for information only and will not be scored.)
3. Complete **Section III. ACKNOWLEDGEMENT** by manually signing and dating the document. (Reference documents must include a manual actual signature.)
4. E-mail **THIS PAGE** and your completed reference document, **SECTIONS I through III** to rfp@jp.pr.gov.
5. This completed document **MUST** be received no later than 12:00 p.m. on July 13, 2021 AST. Reference documents received after this time will not be considered. References received without a manual signature will not be accepted.
6. **DO NOT** return this document to the Proponent.
7. The Puerto Rico Planning Board may contact references by phone for further clarification if necessary.

**[The remainder of this page intentionally left blank.]**

**REFERENCE QUESTIONNAIRE  
PUERTO RICO PLANNING BOARD  
RFP NO. RFP-2021-001**

**REFERENCE NAME:** \_\_\_\_\_

**PROPONENT NAME:** \_\_\_\_\_

**Section I. RATING**

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Using the Rating Scale provided below, rate the following numbered items by circling the appropriate number for each item:

**RATING SCALE**

<b>CATEGORY</b>	<b>SCORE</b>
Poor or Inadequate Performance	0
Below Average	1 – 3
Average	4 – 6
Above Average	7 - 9
Excellent	10

1. Rate the overall quality of the vendor’s services:

**10    9    8    7    6    5    4    3    2    1    0**

2. Rate the response time of this vendor:

**10    9    8    7    6    5    4    3    2    1    0**

3. Rate how well the agreed upon, planned schedule was consistently met and deliverables provided on time. (This pertains to delays under the control of the vendor):

**10    9    8    7    6    5    4    3    2    1    0**

4. Rate the overall customer service and timeliness in responding to customer service inquiries, issues and resolutions:

**10 9 8 7 6 5 4 3 2 1 0**

5. Rate the knowledge of the vendor’s assigned staff and their ability to accomplish duties as contracted:

**10 9 8 7 6 5 4 3 2 1 0**

6. Rate the accuracy and timeliness of the vendor’s billing and/or invoices:

**10 9 8 7 6 5 4 3 2 1 0**

7. Rate the vendor’s ability to resolve a problem related to the services provided quickly and effectively:

**10 9 8 7 6 5 4 3 2 1 0**

8. Rate the vendor’s flexibility in meeting changing business requirements:

**10 9 8 7 6 5 4 3 2 1 0**

9. Rate the likelihood of your company/organization recommending this vendor to others in the future:

**10 9 8 7 6 5 4 3 2 1 0**

**Section II. GENERAL INFORMATION**

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1. Please include a brief description of the products and services provided by this vendor for your business/organization and any other comments you would like to provide:

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2. During what time period did the vendor provide these services for your business?

Month: \_\_\_\_\_ Year: \_\_\_\_\_ to Month: \_\_\_\_\_ Year: \_\_\_\_\_

3. Annual Value of Contract: \$\_\_\_\_\_

**Section III. ACKNOWLEDGEMENT**

---

I affirm to the best of my knowledge that the information I have provided is true, correct, and factual:

\_\_\_\_\_  
Signature of Reference

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email address



## Appendix 6

### Designation Of Subcontractors

**PROPONENT NAME:**

---

**SUBCONTRACTOR NO. 1:**

Proposed Subcontractor Services: \_\_\_\_\_

Percentage (%) of Total Work: \_\_\_\_\_

Subcontractor \_\_\_\_\_

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

Contact \_\_\_\_\_

Person/Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

---

**SUBCONTRACTOR NO. 2:**

Proposed Subcontractor Services: \_\_\_\_\_

Percentage (%) of Total Work: \_\_\_\_\_

Subcontractor \_\_\_\_\_

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

Phone: \_\_\_\_\_

Contact \_\_\_\_\_

Person/Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

---

**SUBCONTRACTOR NO. 3**

Proposed Subcontractor Services: \_\_\_\_\_

Percentage (%) of Total Work: \_\_\_\_\_

Subcontractor \_\_\_\_\_

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

Contact \_\_\_\_\_

Person/Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Email Address:

**ADD ADDITIONAL PAGES IF NEEDED**

**[The remainder of this page intentionally left blank.]**

Appendix 7

LETTER OF INTENT TO SUBMIT A PROPOSAL

\_\_\_\_\_ (the "Proponent") has received a copy of RFP NO. RFP-20201-001 (the "RFP) issued by the Puerto Rico Planning Board. I, the undersigned, in my capacity as \_\_\_\_\_ of the Proponent, am duly authorized to submit this Letter of Intent on behalf of Proponent, and to designate the following person to act on behalf of the Proponent as its principal contact in connection with the RFP.

PRINCIPAL CONTACT:

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

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

Address: \_\_\_\_\_

\_\_\_\_\_

Office Phone: \_\_\_\_\_

Cell Phone: \_\_\_\_\_

Email: \_\_\_\_\_

I hereby acknowledge receipt of the RFP and any addenda thereto, and certify that it is the intent of the Proponent to submit a proposal in response to the RFP. f

Signature: \_\_\_\_\_

Name/Title: \_\_\_\_\_

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

## Appendix 8

### **LOBBYING CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.

(2) If any funds other than 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 in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Proponent's Authorized Official

\_\_\_\_\_  
Name and Title of Proponent's Authorized Official

\_\_\_\_\_  
Date

## Appendix 9

### GENERAL TERMS AND CONDITIONS

#### 1. SERVICE QUALITY

The proponent will be required to represent and warrant in the contract that it can and will perform, or cause the services to be performed, in strict accordance with the provisions and requirements of the contract. The services will be performed in a timely, professional and workmanlike manner, in accordance with all applicable industry and professional standards. Such services shall be in compliance with all applicable local and federal laws, rules, regulations or orders. If the Board notifies the proponent, or if the proponent becomes aware of any non-performance, error or negligence covered by the foregoing warranties, the proponent shall, at its own expense, promptly (but in no event later than thirty (30) days after written notification by the Board) correct such non-performance, error or negligence.

#### 2. DOCUMENT SIGNATURES

Proponent's proposals and contracts are to be signed on behalf of the proponent by an authorized representative of the proposing entity, stating signer's official relation to, or position with, the proponent. Signatures shall be written in ink. Signatures with rubber stamps, typewriter, computerized or in pencil will not be acceptable. If the proponent is a partnership, the submitted proposal must be signed by a partner with his or her title noted thereon. If the proponent is a corporation, the proposal must be signed by an officer of the corporation and be accompanied by a corporate resolution authorizing the individual to sign the proposal and to enter into a contractual agreement on behalf of the corporation. The corporate resolution must specify the state of incorporation. Unsigned proposals and proposals not properly signed or accompanied by the appropriate corporate resolution will be rejected.

#### 3. CONTRACT TERM

The Board intends to award a multi-year contract (subject to annual appropriations for each fiscal year), to one (1) proponent for the services requested in this RFP. The term of the contract is expected to commence on the date that the contract is executed by the PBPB and the selected proponent and end on or before January 31, 2024, subject to annual budget appropriations by the Board, unless terminated earlier. In accordance with Section II.I of this RFP, the Board reserves the right to award a shorter-term agreement.

#### 4. BONDS REQUIRED – BID BOND

Bid Bond – proponent must provide a bid bond in an amount equal to \$100,000.00. The bond may be issued by a surety company authorized to do business in the Commonwealth of Puerto Rico and included in the latest Federal Register (Circular 570) as accepted by the Federal Government. The Bid Bond may also be in the form of an Irrevocable Letter of Credit issued by a financial institution authorized to do business in the Commonwealth of Puerto Rico, or a money order, cashier’s or certified check issued to the Secretary of the Treasury.

## **5. PROPONENT COMPENSATION**

Compensation for services performed under the contract shall not exceed the maximum compensation authorized by the Board therein or applicable local or federal regulation. The Board agrees to pay the Proponent the contract compensation for the services delivered during the term of the contract.

Payment of compensation shall be based on actual services performed and/or products delivered during the term of the contract. The Board shall not be obligated to pay for any services not performed or products not delivered in compliance with the contract. In the event of early termination of the contract, the Board shall only be obligated to pay the compensation due up to the date of termination, unless otherwise agreed by the Board as specified in the immediately preceding paragraph. In no event shall the Board be liable for any costs incurred or services delivered after the effective date of termination as provided herein.

## **6. CONTRACT TERMINATION; EVENTS OF DEFAULT**

- A. Termination for Convenience or to Protect the Public Interest. If at any time during the Term of the contract, the Board determines, in its sole discretion, that the services provided by proponent are no longer in its best interest, the Board may terminate the contract upon thirty (30) calendar day’s written notice to proponent. Further, the Board may terminate the contract if the Board determines that the termination is necessary for the protection of the public interest. In either instance, the Board will only pay for services rendered until termination date and will not pay any early termination charges under the contract.
- B. Suspension of Services. Upon ten (10) days prior written notice from the Board to the proponent, the Board may request that proponent suspend services in whole or in part. The proponent shall promptly resume performance of services upon written notice from the Board.
- C. Proponent Events of Default. Events of default (“Events of Default”) include, but are not limited to, the following:

- i. Any material misrepresentation by proponent in its response to the RFP or the contract;
- ii. Breach of any material agreement, representation or warranty made by proponent in its proposal or the awarded contract;
- iii. Failure by proponent to perform in accordance with or comply with the terms and conditions of the contract;
- iv. Default by proponent under any other agreement proponent may have with the Board;
- v. The directors or officers of the proponent are convicted of the commission of any felony or any misdemeanor that implies corruption or moral depravation, or for any crime against the public treasury, faith or function or that involves loss of public property or funds;
- vi. If any license, permit, franchise or authorization needed by the proponent to carry out its obligations under the contract is suspended, revoked or expired;
- vii. Failure to maintain insurance as required under the contract;
- viii. An assignment by the proponent for the benefit of creditors or consent by proponent to the appointment of a trustee or receiver or the filing by or against proponent of any petition or proceeding under any bankruptcy, insolvency or similar law.

## **7. BOARD REMEDIES**

The occurrence of any Event of Default which Proponent fails to cure, or cause to be cured, within thirty (30) calendar days after receipt of written notice given in accordance with the terms of the contract specifying the Event of Default, or if such Event of Default cannot be reasonably cured within fifteen (15) calendar days after notice, proponent fails to commence, or cause to be commenced, and continue diligent efforts to cure or cause said Event of Default to be cured, in the sole opinion of the Board, the Board may declare the proponent in default, and give the proponent written notice of the Board's intent to terminate the contract, effective as of the date specified in the notice. After giving written notice to the proponent, the Board may invoke any or all of the following remedies:

- A. Take over and complete the services or any part thereof, either directly or through others. Proponent shall be liable to the Board for any excess costs incurred by the Board. Any amount due the proponent under the contract or any other agreement proponent may have with the Board may be offset against amounts claimed due by the Board in exercising this remedy;
- B. Terminate the contract, effective at a time specified by the Board, in whole or in

- part, as to any or all of the services yet to be performed and/or required;
- C. Suspend services during the thirty (30) day cure period if the default results from an action or failure to act by proponent which affects the safety or welfare of students or the Board staff;
  - D. Seek specific performance, an injunction or any other appropriate equitable remedy;
  - E. Receive from proponent any and all damages, including money damages, incurred as a result or in consequence of, an Event of Default;
  - F. Withhold all or part of proponent's compensation under the contract; and/or
  - G. Any other legal remedy available to the Board.

## **8. NO WAIVER**

No delay or omission, or series of delays or omissions, by the Board to exercise any right under the contract shall be construed as any type of waiver of any right of the Board under the contract or the right to declare an Event of Default in the future. The remedies under the terms of the contract are not intended to be exclusive any other remedies provided, and each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. The parties acknowledge that this right is solely for the benefit of the Board and if the Board permits the Proponent or any of its subcontractors to continue to provide services despite one or more Events of Default, the Proponent is not relieved of any responsibilities, duties or obligations under the contract.

## **9. TURNOVER OF DOCUMENTS AND RECORDS**

Upon demand by the Board, following termination of the contract for any reason, or following the expiration of the contract by its terms, proponent shall turn over to the Board or its designee within ten (10) business days of demand, all materials, supplies, equipment owned, or purchased by the Board, completed or partially completed work, analyses, data, computer disks, documents, reports and any other information pertaining to the contract or the performance or furnishing of services, whether prepared by the proponent or its subcontractors. The proponent shall cause its subcontractors to undertake the same obligations agreed to by proponent under the contract.

## **10. WORK QUALITY ASSURANCE**

The proponent is responsible for the quality of the work and activities of each of its staff and subcontractors, including without limitation, compliance with the terms of the contract. The proponent shall retain and utilize sufficient resources to assure the most effective and efficient performance of services and shall utilize professionals licensed to practice the applicable profession, as required by law or by the contract. The proponent shall use efficient business



administration methods and perform the services in the best way and in the most expeditious and economical manner consistent with the best interests of the Board, so as to ensure, among other things, that the services are performed at a reasonable cost to the Board and that the services performed by other entities or persons in connection with the contract are also efficiently and cost-effectively delivered.

**11. CONFIDENTIAL INFORMATION, DISSEMINATION OF INFORMATION, OWNERSHIP, SURVIVAL**

- A. Confidential Information. During the performance or delivery of services to the Board, the proponent may have access to or receive certain information that is not generally known to others (“Confidential Information”). The proponent will not use or disclose any Confidential Information or any finished or unfinished originals, documents, screens, reports, writings, procedural manuals, forms, source codes, object codes, work flow charts, methods, construction documents, processes, data, data studies, briefs, drawings, maps, files, records, computer printouts, papers, notes, designs, equipment descriptions, or other materials prepared or generated as a result of the contract (“Work Product”) without the prior written consent of the Board. The proponent shall use at least the same standard of care in the protection of the Confidential Information of the Board as proponent uses to protect its own confidential information, but in any event such Confidential Information shall be protected in at least a commercially reasonable manner.
- B. Dissemination of Information. The proponent shall not disseminate any information obtained in the performance or delivery of services for the Board to a third party without the prior written consent of the Board. Proponent shall not issue publicity news releases or grant press interviews during or after the performance or delivery of the services without the prior written consent of the Board. If proponent is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any Confidential Information or Work Product which may be in the proponent’s possession, the proponent shall immediately give notice to the Board and its legal counsel, with the understanding that the Board shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. The proponent will not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended. The proponent will cause its personnel and subcontractors to undertake the same obligations of confidentiality agreed to by proponent under the contract.
- C. Ownership. The proponent agrees that, to the extent permitted by law, any Work Product, including any ideas, written procedures, rules, regulations or such similar documents,

photographs, drawings, videos, recording, graphics, design, files, digital files, reports, or materials drafted by the proponent for the performance of work pursuant to this RFP (whether copyrightable or not), shall exclusively be deemed “works for hire” within the meaning and purview of the United States Copyright Act, 17 U.S.C. 101§ et seq. All Work Product and Confidential Information shall at all times be and remain the property of the Board. The proponent will execute, without additional payment or consideration, all documents and perform all acts that the Board may request in order to assist the Board in perfecting or protecting its rights in and to the Work Product and all intellectual property rights relating to the Work Product. All of the foregoing items shall be delivered to the Board upon demand at any time and in any event, shall be promptly delivered to the Board upon expiration or termination of the contract within ten (10) business days of demand. In addition, the proponent shall return the Board’s data in the format requested by the Board.

- D. Injunctive Relief. In the event of a breach or threatened breach of paragraphs A, B, and/or C above, the proponent acknowledges and agrees that the Board would suffer irreparable injury not compensable by money damages and would not have an adequate remedy at law. Accordingly, the proponent agrees that the Board shall be entitled to immediate injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition to and without prejudice to such rights that the Board may have in equity, or by law or statute.
- E. Survival. The provisions of the contract pertaining to Confidential Information, dissemination of information and ownership shall survive the termination or expiration of the contract.

## **12. NO OTHER RIGHTS LIMITED**

Nothing in the foregoing representations and warranties will be construed to limit any other rights or remedies available to the Board under the law or the contract.

## **13. GIFTS AND GRATUITIES PROHIBITED**

No gift, gratuity, offer of employment or other item of value was offered or made by the proponent or to the best of proponent’s knowledge, by or to any subcontractors, or any of its employees, agents or subcontractors as an inducement for the award of the contract.

## **14. INDEPENDENT CONTRACTOR**

It is understood and agreed that the relationship of proponent to the Board is and shall continue to be that of an independent contractor. Neither proponent nor any of proponent’s staff, agents,

employees or subcontractors shall be entitled to receive Board employee benefits. It is further understood and agreed that the Board shall not be responsible for, nor incur any liability for, any State or Federal withholding or other taxes or for FICA or State unemployment insurance for proponent, its agents, employees or subcontractors, and the payment of any such taxes incurred or due by proponent shall be the sole responsibility of proponent. The proponent agrees that neither Proponent nor its staff or subcontractors shall represent themselves as employees or agents of the Board. The proponent shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including, but not limited to, a social security number or a federal employer identification number.

## **15. INDEMNIFICATION**

The proponent agrees to defend, indemnify and hold harmless the Board, and its respective members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and, expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out any of the following:

- (i) negligent or willful acts or omissions of the proponent, its officials, agents, employees and/or subcontractors in the performance of the contract;
- (ii) failure of proponent or its subcontractors to comply with applicable law;
- (iii) actual or asserted violation or infringement of any domestic or foreign patents, copyrights or trademarks or other intellectual property, or any improper use of confidential information or other proprietary rights that may be attributable to proponent or any subcontractor in connection with the services;
- (iv) claims by any Government agency as a result of a failure by proponent or any subcontractor to pay taxes;
- (v) failure of contractor to make payments to any subcontractor in accordance with the respective subcontract; or
- (vi) personal injury to, illness or death of any person, or damage to or destruction of property of any person in any way arising out of or resulting from or related to the services to the extent caused by proponent or any subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

The proponent shall, at its own cost and expense, appear, defend and pay all attorney fees and

other costs and expenses arising from the indemnification provisions of the contract. In addition, if any judgment shall be rendered against the Board in any such action, the proponent shall, at its own expense, satisfy and discharge such obligation of the Board. The Board shall have the right, at its own expense, to participate in the defense of any suit, without relieving the selected proponent(s) of any of its obligations under the indemnification provisions of the contract. The Board retains final approval of any and all settlements or legal strategies, which involve the interest of the Board.

If Proponent, after receiving notice of any such proceeding, fails to immediately begin the defense of such claim or action, the Board may (without further notice to Proponent) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of Proponent, subject to the right of Proponent to assume the defense of such claim or action at any time prior to settlement, compromise or final determination thereof. The cost and expense of counsel retained by the Board in these circumstances shall be borne by Proponent and Proponent shall be bound by, and shall pay the amount of, any settlement, compromise, final determination or judgment reached while the Board was represented by counsel retained by the Board pursuant to this paragraph, or while Proponent was conducting the defense.

The indemnifications set forth herein shall survive the expiration or termination of the contract.

## **16. NON-LIABILITY OF BOARD OFFICIALS**

The proponent agrees that no Board member, employee, agent, contractor, consultant, officer or official shall be personally charged by proponent, its members if a joint venture, or any subcontractors with any liability or expense under the contract, or be held personally liable under the contract to proponent, its members if a joint venture, or any subcontractors.

## **17. INSURANCE REQUIREMENTS**

a. The proponent, at its own expense, shall procure and maintain insurance for all operations under the contract, whether performed by proponent or by subcontractors. Within 30 days of award notification, the proponent shall submit to the Board satisfactory evidence of insurance coverage in the form of a Certificate of Insurance and within 60 days of award notification, the proponent shall submit to the Board a certified copy(s) of any insurance policy required under this RFP.

b. Contractor shall furnish the Agency with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the Agency before work commences and upon any contract renewal or insurance policy renewal thereafter.

c. In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision for each insurance policy. The Agency reserves the right to request complete certified copies of all required insurance policies at any time.

d. If the Contractor does not meet the insurance requirements at policy renewal, at the option of the Agency, payment to the Contractor may be withheld until the requirements have been met, OR the Agency may pay the renewal premium and withhold such payment from any monies due the Contractor, OR the contract may be suspended or terminated for cause. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

e. All insurance policies must be issued by insurance companies authorized to do business in Puerto Rico, must have a solid financial position and be classified as “A-” or better and a financial strength of VII or higher by the latest version of the Best Key Rating Guide or be accepted by the Board after proper evaluation.

f. Any failure by the Board to demand or receive proof of insurance coverage shall not constitute a waiver of contractor’s obligation to obtain the required insurance. The receipt of any certificate does not constitute an agreement by the Board that the insurance requirements in the contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all contract requirements.

g. The contractor’s failure to carry or document required insurance shall constitute a breach of the contractor’s agreement with the Board. Non-fulfillment of the insurance conditions may constitute a violation of the contract, and the Board retains the right to stop services until proper evidence of insurance is provided, or the contract may be terminated. The Board will not pay the contractor for any services if satisfactory proof of insurance is not provided before the commencement of services.

h. Any deductibles or self-insured retentions on referenced insurance coverage must be borne by contractor. Any insurance or self-insurance programs maintained by the Board do not contribute with insurance provided by the contractor under the contract.

i. All subcontractors are subject to the same insurance requirements of contractor unless otherwise specified in the contract. The contractor shall require any subcontractors under the contract to maintain comparable insurance naming the contractor, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insureds. The contractor will maintain a file of subcontractor’s insurance certificates evidencing compliance with these requirements.

- j. The coverage and limits furnished by contractor in no way limit the contractor's liabilities and responsibilities specified within the contract or by law. The required insurance is not limited by any limitations expressed in the indemnification language in the contract or any limitation placed on the indemnity in the contract given as a matter of law.
- k. The contractor agrees that insurers waive their rights of subrogation against the Board.
- l. Prior to signature of the contract contractor and/or its subcontractors shall promptly provide a certified copy of any applicable policy of insurance. The Board reserves the right to modify, delete, alter or change insurance requirements at any time.

## **18. NON-DISCRIMINATION**

During the Term of the contract and any extension or renewal thereof, the proponent shall not fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, handicap, marital status, parental status, military discharge status, or national origin; or to limit, segregate, or classify employees or applicants for employment from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, handicap, marital status, parental status, military discharge status, or national origin. It is also an unlawful employment practice for proponent or any of its members to subject any Board employee, applicant for services, participant, student or volunteer to unwelcome sexual advances, requests for sexual favors or conduct of a sexual nature when submission to or rejection of such conduct is: (i) made either explicitly or implicitly a term or condition of such person's employment, participation or receipt of services; (ii) is used as a basis for a decision affecting the individual's employment, participation or receipt of services; or (iii) has the purpose of creating an intimidating, hostile, or offensive working or learning environment.

## **19. ENTIRE AGREEMENT; AMENDMENTS**

The contract, including all attachments and referenced documents, will constitute the entire agreement of the parties with respect to the matters contained therein. No modification of or amendment to the contract shall be effective unless such modification or amendment is in writing and signed by both parties.

## **20. CONTINUING OBLIGATION TO PERFORM**

In the event of any dispute between proponent and the Board, proponent shall expeditiously and diligently proceed with the performance of all of its obligations under the contract with a reservation of all rights and remedies it may have under or pursuant to the contract at law or in equity.

## **21. SURVIVAL/SEVERABILITY**

All express representations and warranties made or given in the contract shall survive the completion of services by the proponent or its subcontractors, or the termination of the contract for any reason. If any provision or part of the contract is held to be unenforceable, the contract shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects the contract shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

## **22. GOVERNING LAW**

The contract shall be governed by, interpreted and enforced in accordance with the laws of the Commonwealth of Puerto Rico and any applicable federal laws and regulations. The parties further agree to assert any claims or causes of action that may arise out of the contract in the Puerto Rico Court of First Instance of San Juan.

## **23. JOINT AND SEVERAL LIABILITY**

In the event that proponent, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then, and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Proponent shall be the joint and several obligation or undertaking of each such individual or other legal entity.

## **24. TAX OBLIGATIONS**

Proponents shall be responsible for complying with applicable federal and local tax laws and regulations. Proponent shall pay all required taxes on amounts paid to proponent under the contract, and indemnify and hold the Board harmless from any and all taxes, assessments, penalties, and interest asserted against the Board by reason of the proponent's relationship, as an independent contractor, created by the contract. Proponent shall fully comply with the workers' compensation law regarding Proponent and Proponent's employees. Proponent shall indemnify and hold the Board harmless from any failure of proponent to comply with applicable workers' compensation laws or applicable federal and local tax laws and regulations. The Board may offset

against the amount of any fees due to proponent under the agreement any amount due to the Board from proponent as a result of proponent's failure to promptly pay to the Board any reimbursement or indemnification arising under this paragraph.

Proponent shall bear all taxes and duties etc. levied or imposed on proponent under the contract on account of devices supplied and services rendered, and payments received by proponent from the Board under the contract.

Proponent will certify in the contract that it has complied with its federal and Puerto Rico tax obligations during the previous five (5) years, including filing income tax returns on earnings or extensions thereof. The Proponent further certifies that it does not have any debt with the Government of Puerto Rico, nor for personal or real estate taxes or excise taxes. The Proponent specifically represents and warrants that all Puerto Rico and federal tax returns have been filed and all obligations have been paid or proponent has a valid payment plan with which it is complying. It is explicitly recognized by proponent that this is an essential pre-condition to any contract or agreement and if the above certification should prove not to be truthful in all or in part, it will be sufficient cause for the Board to not engage the services of the proponent or to cancel any agreement entered into immediately without any further obligation to the proponent.

## **25. NON-APPROPRIATION**

Expenditures not appropriated by the Board in its current fiscal year budget are deemed to be unrecognized expenditures and therefore unallowable expenses. In the event sufficient funds are not appropriated in a subsequent fiscal year by the Board for performance under the contract, the Board shall notify proponent and the contract shall terminate on the last day for the fiscal period for which funds were appropriated. In no event shall the Board be liable to proponent for any amount in excess of the then current appropriated amount.

## **26. FORCE MAJEURE**

Neither the proponent nor the Board shall be responsible for any failure to perform due to causes beyond either's respective reasonable control (each a "Force Majeure"), including but not limited to, acts of God, riots, embargoes, terrorist acts, acts of civil or military authorities, disruptions in the flow of data to or from networks, denial of or delays in processing of export license applications, accidents, strikes, fuel crises or power outages.

## **27. PROPONENT NOT AN AUTHORIZED REPRESENTATIVE OF THE BOARD**

Proponent understands and agrees that proponent is not an authorized representative of the Board and that all Board decisions and actions must be made by authorized Board representatives.



**28. KEY PERSONNEL AND SUBCONTRACTORS**

Any key personnel of the proponent or any of its subcontractors assigned to provide services to the Board and who are listed in the contract (“Key Personnel”) will continue to provide services to the Board for the Term of the contract, unless the Board requests that the Key Personnel be removed or if the Key Personnel resigns or is dismissed, or upon loss/removal of a Key Personnel due to illness, disability or death. Proponent shall notify the Board promptly after any Key Personnel resigns or is dismissed, or upon loss or removal of any Key Personnel due to illness, disability or death. Before the assignment of any Key Personnel or the replacement of any Key Personnel, proponent will provide the Board, upon the Board’s written request, with the resume of the prospective Key Personnel, an opportunity to interview such individual or individuals, and will obtain the written consent of the Board’s authorized representative to the assignment of such individual as a Key Personnel.

Key Personnel assigned to perform proponent’s obligations under the contract shall have experience, training, and expertise equal to personnel with similar responsibilities in the business in which proponent is engaged and shall have sufficient knowledge of the Board’s practices and areas of expertise, to enable them to perform their duties and responsibilities under the contract. Upon request by the Board, proponent will remove any Key Personnel from the Board’s account and provide a replacement in a timely manner.

Proponent shall furnish the Board with a copy of all subcontracts within five (5) days after the Board’s request.

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## Appendix 10

**See Attachement**

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.
- b. Key Definitions.

(1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor 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, 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 agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section,

and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor 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.

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

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as 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.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40

U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.

- c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
- d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. 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 Copeland Anti-Kickback Act provides that each contractor or subrecipient must 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 or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the next subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. As such, FEMA requires the following contract clause:

“Compliance with the Copeland “Anti-Kickback” Act.

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must 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.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. 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



FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

- a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ I; and Chapter IV, ¶ 6.d and Appendix C, ¶ 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530; Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:
  - (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

- (2) The contract requires the approval of FEMA, regardless of amount.
  - (3) The contract is for federally-required audit services.
  - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4.
- c. 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 must 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 non-Federal award. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

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.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.
2. If any funds other than 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 in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_

Signature of Contractor's Authorized Official

\_\_\_\_\_

Name and Title of Contractor's Authorized Official

\_\_\_\_\_

Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ K; 2 C.F.R. § 200.322; Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.”

#### 11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:
- b. Changes.

To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

- c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and



agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

“Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

## 12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).
- b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: “The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

## 13. Compliance with Federal Law, Regulations, and Executive Orders.

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor

will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”