

Request for Proposal No. DSP-RFP-2024-07

Architectural & Engineering Services for the Puerto Rico Public Safety Warning and Communications Infrastructure Project (PRSWCIP), Hazard Mitigation Grant Program Project 4339-0014

Invitation: The Department of Public Safety (DPS) is requesting proposals for Architectural & Engineering Services for the PRSWCIP.

Date of Issue: This Request for Proposals is issued on August 21, 2024

Webinar Presentation of RFP: This webinar is to clarify any doubts or questions and provide an overview of the project. It will be held on August 28, 2024 at 1:00 p.m. AST and you can access it [here](#) or https://dsp.pr.gov/documentos?44653947_page=2

Closing Date: All proposals must be submitted by October 21, 2024, by 3:00 p.m.

Contact Person: All questions and concerns regarding this request for proposals, including any requests for information and clarification, must be made in writing to the contact person listed below, who will respond to them within the term provided below. Information obtained from other sources is neither official nor reliable. If the DPS determines that it is necessary, all questions and answers will be documented and distributed to all proposers.

Tatiana Padín Arvelo
Department of Public Safety
Telephone: (787)793-1211 ext. 1026
Email: propuestas@dsp.pr.gov

Submission of Proposals: Proposals must be submitted by email on the stated closing date. The email must clearly state the **name and address of the proposer, the RFP number, and the project name. Proposals should be sent to the following e-mail address:**

propuestas@dsp.pr.gov

Faxed Proposals will not be accepted or evaluated.

Proposals without all the required information will be rejected and will not be considered. In the event of disputes about the time and date of receipt of a proposal, the date and time of receipt set by the DPS will prevail.

Questions: Questions to clarify doubts about the application process and requirements, the proposal process, or the specifications contained therein, must be submitted in writing, to

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prouestas@dsp.pr.gov. Phone calls will not be accepted. Questions or meeting requests will only be accepted to clarify doubts about the application process and requirements, the proposal process, or the specifications contained therein.

Technical information regarding additional costs may be requested for clarification purposes but will not change the original proposal received or the specifications of the requests for proposals. Any questions or concerns must be submitted in writing to the email provided on or before September 6, 2024.



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1. INTRODUCTION

The Department of Public Safety, hereinafter DPS, was created by Law 20 of April 10, 2017. It has the duty and obligation to prevent and alert the public in situations of emergency or disaster.

The DPS received approval from Federal Emergency Management Agency (FEMA) to proceed with Phase I of Hazard Mitigation Grant Program (HMGP) Project # 4339-0014 Integrated Public Alert and Warning System (IPAWS), hereinafter the Project, which is not to be confused with FEMA's own IPAWS program.

For this Project when referring to an IPAWS system the terms DPS IPAWS will be used to reference DPS's desired integrated public alert and warning system, and FEMA IPAWS will be used to reference FEMA's national IPAWS program.

Phase I of the Project includes updating inventory and assessment of facilities owned by the Government of Puerto Rico, assessments and evaluations of existing DPS IPAWS systems, assessments of radio communications systems, and existing sites and towers. Phase I also includes assessment of frequencies, Federal Communications Commission (FCC) rules, the development of required Memorandum of Understanding or Memorandum of Agreement between agencies as necessary, and the completion of Architectural and Engineering (A&E) design work necessary to meet the Conditions of Approval (COA) for Phase II of the Project.

Phase II of the Project includes the installation and construction of the DPS IPAWS system, the radio communications system, and associated towers and equipment.

The DPS is undertaking the Project to perform upgrades and repairs to the current Puerto Rico Public Safety Warning and Communications Infrastructure (PRPSWCI).

The DPS has issued this Request for Proposal (RFP) to identify a qualified A&E firm to analyze the current PRPSWCI and to develop design specifications and performance specifications to upgrade, repair, and or replace current components of the PRPSWCI, to improve 9-1-1 dispatch operations, territory wide critical communications, and public warning systems. The two main components of the PRPSWCI are: Public Safety Land Mobile Radio (LMR) systems and the All Hazards Integrated Public Safety Warning and Communications system which includes the Outdoor Warning System (OWS) along with the various FEMA IPAWS system components.

The DPS has awarded a professional service contract # 2024-00061 to WITT O'BRIEN'S PR, LLC to provide Program Management of Phase I of the Project. The Program Manager will provide technical and project management oversight of the A&E firm and will serve as the primary interface between DPS and the selected firm.

This project's main purpose is to expand community resilience against natural hazards by implementing new or upgrading existing public safety communications and public safety warning systems and infrastructure throughout Puerto Rico.

The DPS proposes implementing an all-hazards integrated safety warning and communications infrastructure to be installed in eligible towers, poles, and facilities across the island. This compatible PRPSWCI will provide alerts of impending threats to life and property, integrating the U.S. Emergency Alert System, National Warning System, Wireless Emergency Alerts, and NOAA Weather Radio under an integrated solution.



A DPS Integrated Public Alert and Warning System (IPAWS) is essential for a tropical archipelago like Puerto Rico. The impacts of frequent precipitation, storms, hurricanes, earthquakes, and other natural and human-made incidents require the first response personnel's systematic mobilization. Wireless communications systems have been the backbone of Puerto Rico first responder operations for many years.

The current Land Mobile Radio systems (LMR) wireless communications systems within Puerto Rico consists of legacy, analog, wideband infrastructure and subscriber equipment as well as new, P25-compliant narrowband infrastructure and subscriber equipment. Much of the legacy equipment is not compliant with present day interoperable P25 public safety communications standards or existing mandates for secure encryption and spectrum efficient narrowband communications.

Some of the equipment is not interoperable with other systems, which hampers the first responders' mission and requires workaround solutions for law enforcement officers to communicate with federal, state, local and territorial agencies. This creates a first responder safety issue and jeopardizes mission effectiveness because the legacy equipment does not meet mission requirements and operational needs.

Puerto Rico first responders require interoperable, encrypted, wireless communications designed to support their 24x7x365 mission operations. The systems must be capable of supporting both routine and emergency response communications and must be scalable to support additional users in times of crisis.

2. PURPOSE AND INTENT

DPS issues this Request for Proposal (RFP) to solicit offers from responsible and qualified firms to provide architectural and engineering services to develop detailed design, functional, conceptual, and performance specifications for an integrated communications infrastructure for LMR systems and an All Hazards integrated public warning system. Upon review and acceptance of the specifications by DPS, the information collected will then be used by the selected firm, who will be responsible of developing a Request for Proposal for the supply, construction and implementation of the proposed systems.

Currently, critical LMR communications across the Territory are handled by the following existing systems:

- Puerto Rico Police Bureau (PRPB P25 trunked/P25 conventional radio system
- Emergency Medical Service Bureau (EMSB) analog conventional system/Next Edge (DMR)
- Puerto Rico State Interoperability P25 conventional system
- Puerto Rico Emergency Management Bureau (PREMB) P25 conventional system
- Mobile Data Communications

The intent of this contract is to engage a qualified engineering firm to develop the design specifications and performance specifications for the implementation of a unified territory wide P25 LMR communications system integrating all previously existing capabilities into a unified system.



The communications infrastructure design must also include the development of a plan to upgrade, or add, Public Service Answering Points and Dispatch systems to provide reliable, redundant, and integrated operations and to provide a high-level plan for implementing a Next Generation 911 (NG-911) system.

Separate but equal is the requirement to develop a territory wide All Hazards integrated emergency warning system design specification and performance specification. The envisioned DPS IPAWS system will include outdoor warning high power speaker arrays capable of voice and tone base alerting and integrate with FEMA IPAWS, and other mass notification systems as required.

The selected firm will complete all work necessary to meet the deliverables of this RFP as coordinated by DPS and DPS's designated Program Manager.

3. STATEMENT OF CONFIDENTIALITY

This RFP contains confidential and proprietary information about DPS, and PREMA which is provided for the sole purpose of permitting the Proponent to respond to this RFP. The Proponent agrees to maintain the confidentiality of the information and to not disclose this information to any person outside the Proponent's team directly responsible for preparing the Proposal for this RFP.

4. CONTRACT TERM

This Contract shall be in effect until 10/31/2025, from its signing by all Parties. This contract shall not exceed the HMGP sub-grant period of performance.

FEMA financial assistance, specifically HMPG, will be used to fund this project and the Selected Proponent will be required to comply with all project specifications, applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

The Proponent will comply with all applicable laws, regulations, and executive orders that regulate the contracting process and requirements of the Government of Puerto Rico, including Act 73-2019, as amended, known as the "2019 General Services Administration Act for the Centralization of Purchases of the Government of Puerto Rico" ("Act 73-2019").

In compliance with the provisions of Act 73-2019, the Proponent will provide DPS the Certification of Eligibility of the Unique Registry of Professional Services Providers (known in Spanish as "Certificado de Elegibilidad del Registro Único de Proveedores de Servicios Profesionales"), issued by the General Services Administration.

5. ADDENDA

DPS reserves the right to modify the RFP documents up to three (3) days before the event's closing date. Any changes or modifications to this RFP's terms, conditions, or specifications will be made through written notice provided by DPS.

6. COMMUNICATIONS

For this RFP process, all communications must be made and addressed to the DPS Transformation and Project Management Office:

propuestas@dsp.pr.gov



Neither Proponents nor any Proponent Team Members or any of their respective advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP process, any of the following persons on matters related to this RFP process, the RFP documents, or the Proposals: (a) any member of the Evaluation Committee; (b) an advisor of DPS for this RFP process; (c) any DPS employee or representative (e) any directors, officers or consultants of DPS.

Proponents, and members of their team, are prohibited from directly or indirectly contacting other Proponents, such as directors, officials, employees, consultants, advisers, agents, or representatives in matters related to their proposal preparation, content, or presentation. Failure to comply with these communication restrictions will result in rejection of the proponent’s proposal.

Proposals shall be submitted with no connection to, knowledge of, information comparison, or arrangement, with other Proponent including their directors, officials, employees, consultants, advisers, agents, or representatives.

7. RFP TIMELINE

The following schedule is to advise all Proponents of key dates of the RFP process. Please note that the RFP timeline includes target dates that may change.

Key Review Process Events	Targeted Timeline
Request for Proposal Issued	Aug 21, 2024
Webinar Presentation of RFP (link)	Aug 28, 2024 1:00 p.m. AST
Submittal of questions	Sep 6, 2024
Questions answered	Sep 20, 2024
RFP Proposal Submission	Oct 21, 2024
RFP Award-Notification	Oct 30, 2024

Submittals not fully received by October 21, 2024, 3:00pm AST, will not be considered. Proponents are encouraged to allow themselves enough time to submit their Proposals and to confirm that the files are available for DPS’s review.

8. PROJECT BACKGROUND INFORMATION

The DPS proposes implementing an all-hazards integrated safety warning and LMR communications infrastructure throughout the Commonwealth (PRPSWCI). DPS received conditional approval for Project #4339-0014 under the rules of FEMA’s Hazard Mitigation Grant Program (HMGP). This project consists of two phases, nonetheless, this RFP contemplates only Phase 1. The desired outcome of this project is the implementation of an all-hazards integrated safety warning and communications infrastructure (PRPSWCI) throughout the Commonwealth.

Phase I of this project includes inventorying and assessing facilities of the existing LMR communications infrastructure and Outdoor Warning System (OWS). Phase I will also include starting the assessment of frequencies and Federal Communications Commission (FCC) rules, development of Memorandum of Understanding/Memorandum of Agreement (MOU/MOA) when are where required, and the completion of architectural and engineering (A&E) work to develop preliminary, conceptual designs along with functional and performance criteria of the PRPSWCI.



The conceptual designs and functional/performance criteria need to be of the level of detail to allow for the development of a Vendor Request for Proposal which will be written at the beginning of Phase II of this project.

Phase II of the project encompasses the selection of a vendor to carry out the final design and construction of the A&E information as a result of the completion of Phase I. A separate Vendor RFP will be issued for the Phase II work and no Phase II activities are included in this Phase I RFP. Upon approval of Phase II, the project would include the installation and construction of the PRPSWCI system including the LMR radio communication system and All Hazards IPAWS system.

This compatible PRPSWCI will provide alerts of impending threats to life and property and an interoperable LMR P25 communications infrastructure which will benefit the entire island of Puerto Rico.

LMR wireless communications systems have been the backbone of Puerto Rico first responder operations for many years. The current wireless communications systems within Puerto Rico consists of legacy, analog, wideband infrastructure and subscriber equipment as well as new, P25-compliant narrowband infrastructure and subscriber equipment. The legacy equipment does not comply with present-day interoperable P25 public safety communications standards or existing mandates for secure encryption and spectrum efficient narrow-band communications.

9. FIRM QUALIFICATIONS

To qualify for this solicitation, the proponent or firm must have and provide the following qualifications:

- A Unique Entity ID number.
- Be registered at www.sam.gov and do not appear on the "List of excluded persons/entities" maintained by the Office of the Inspector General on said portal.
- Possess a current license and be in good standing with the Puerto Rico Department of State.
- It must be registered in the Single Registry of Professionals (RUL/RUP), of the General Services Administration (ASG), through its <https://rup.asg.pr.gov> portal;
- Adequate insurance coverage, covering all personnel who will be designated to provide the services subject to this request.

DPS is soliciting proposals from qualified, vendor independent, vendor agnostic, full-service firms who can provide direct assistance with assessing, planning, design, RFP development and implementation oversight of the specific elements described in this RFQ. In the event a proponent has previously sold, or is currently selling, products or solutions in either the LMR or OWS space, the vendor must also demonstrate through prior project experience and verifiable letters of reference the development of vendor agnostic system specifications and designs.

Proponents must disclose any existing, or previous, agreements with either LMR or OWS equipment or solutions providers which have ended within in the previous 24 calendar months. To this end, the proponent shall describe how they would approach the project and the tasks and approach they propose to accomplish the requested outcomes. This description must provide a



high-level overview of the major milestones or key steps needed to ensure the success of a project of this size. The firm's approach to assigning a project team shall also be described, including an organization chart showing the anticipated team members (by position or discipline) and the overall reporting structure.

To be considered for this contract the proponent must provide three verifiable, via valid and current contact information, letters of recommendation from projects of similar scope and size. One letter of recommendation must demonstrate experience with outdoor warning systems similar in scope and size.

To qualify for this solicitation, the proponent must demonstrate the firm and/or current staff have qualifications in the following:

- Demonstrate independence of any manufacturer, software provider, or vendor.
- Demonstrate experience and knowledge of all aspects of public safety operations as they relate to communications and interoperability needs.
- Demonstrate mission critical communications system design experience in the public safety arena.
- Demonstrate All Hazard emergency warning and public notification system design experience with specific experience integrating to the FEMA IPAWS system.
- Demonstrate knowledge and experience with all contemporary and emerging wireless mission critical communications technologies utilized in the LMR public safety arena including:
 - Mission critical radio systems-infrastructure, subscriber hardware, RF system design, radio propagation, frequency research.
 - Microwave and RF control link design and specification.
 - Voice logging.
 - Paging and Alerting systems.
 - Radio interoperability.
 - Radio dispatch console systems.
- Demonstrate familiarity and expertise in FCC regulations, licensing, and frequency availability research. (LMR)
- Demonstrate familiarity with CPG 1-17, ANSI S12.14, FEMA IPAWS Best Practices, and FEMA Outdoor Warning Systems Technical Bulletin (Version 2.0).
- Demonstrate in-house subject matter experts, telecommunications specialists, state and local policy experts, and project managers with LMR APCO (TIA-102) Project 25 implementation experience.
- Demonstrate subject matter expertise in Outdoor Sound Propagation Modeling (OSPM) for tone and voice outdoor warning systems. (OWS)



- Demonstrate subject matter expertise in relevant outdoor warning system and mass notification system standards such as NFPA 72 and UL2572.
- Demonstrate experience in the identification, evaluation and recommendation of appropriate sites and infrastructure for mission critical communications towers and facilities (LMR and OWS).
- Demonstrate experience in the identification, evaluation, and recommendation of appropriate sites for outdoor High-Power Speaker Arrays (HPSA)s. (OWS)
- Demonstrate experience in structured wiring plans and electrical and power system design relative to Public Safety and Mission critical RF systems.
- Demonstrate experience establishing supporting standard operating procedures (SOPs) and policies that enhance system reliability, resiliency, and redundancy.
- Demonstrate experience with providing consulting, systems engineering and architecture services for both urban and rural mission critical communications systems.
- The firm must demonstrate experience with the nationwide public safety broadband network, operated by the First Responder's Network Authority (FirstNet) in conjunction with their partner, AT&T.
- The firm must have at least one employee certified in industry accepted site grounding standards such as Motorola R56 as a staff member.
- The firm must have at least one Electrical Professional Engineer licensed in the Commonwealth of Puerto Rico as a full-time staff member (or affiliate agreement with a PR licensed PE).
- The firm must have at least one Project Management Certified Professional (PMP)
- The firm must demonstrate knowledge in the trends and directions of mission critical radio networks, mobile data, automated systems, facilities and operations.

The DPS requests that responding firms emphasize any full-service capabilities they offer relative to public safety communications, emergency notification and outdoor warning systems, and facilities. Full service means that the firm has extensive capabilities and experience "in-house" with the various consulting, engineering and project management disciplines that might be needed during this project. For example, in addition to the typical technology-related aspects of this type of project, it is often necessary to acquire, develop and design tower / shelter facilities to support the infrastructure.

Other aspects that might require full-service capabilities could include any of the expertise areas listed below. In addition to directly addressing the approach and services offered by the proposer for supporting the requested elements and assessment of the Commonwealth's radio communications needs, the selected firm may be required to provide support in any of these related areas. Proponents shall address their capabilities to provide as-needed assistance in these areas pertaining to mission critical, day-to-day and emergency communications and telecommunications:



- NG 9-1-1 and related networks (ESInet)
- Administrative and operational policy development
- Communications center / emergency operations facility services
- Organizational studies
- Training services
- Mapping and Geographic Information Systems (GIS)
- Tower analysis, zoning processing, program development
- Automated Systems and applications for Public Safety such as Computer Assisted Dispatch (CAD), Mobile Data (MDC/MDT)
- Telephone Call Processing Equipment (CPE) and phone network design
- SCADA and remote monitoring systems

10. SCOPE OF SERVICES AND DELIVERABLES

DPS is soliciting proposals from professional communications engineering firms to provide Architectural and Engineering (A&E) services for the envisioned Puerto Rico All Hazards Public Safety Warning and LMR Communications Infrastructure (PRPSWCI). The PRPSWCI consists of two primary systems: Public Safety LMR and the All Hazards Integrated Safety Warning and Communications system which includes the OWS along with the various FEMA IPAWS system components.

DPS desires a single firm that meets the LMR and OWS qualification and experience requirements of this request for proposal. DPS recognizes that the broad technical domains covered by the Project may be difficult for a single firm to meet these requirements. If a proponent firm intends to subcontract any portion of the scope of work included in this RFP, this work must be identified in their submission and be determined by DPS to not exceed more than 30 percent of the total scope of work.

The proponent firm shall not be associated with the sale, installation or service of radio communications, mobile data systems or public warning systems. The selected firm must demonstrate familiarity with public safety police, fire, and emergency medical communications systems, operations, public notification systems, FEMA IPAWS, outdoor warning systems, distributed recipient mass notification systems, national warning systems, and alerting systems methodologies.

The proponent firm must have an extensive track record and expertise in both mission critical radio system design and in-depth expertise in Public Safety Answering Point (PSAP) design and operations, as well as related technology systems and applications such as Computer Aided Dispatch (CAD), Mobile Data, Records Management Systems (RMS), and NG 9-1-1 networks and telephony, IPAWS implementation, and outdoor warning system design and implementation.



The proponent firm must have an extensive record of accomplishment and expertise in both the design and implementation of all-hazards multi-channel emergency warning and mass notification systems, as well as, integrating these systems with public safety communication infrastructure.

The proponent firm must have an extensive record of accomplishment, demonstrable capabilities, developing system designs and/or specifications that meet or exceed the physical characteristics required to withstand category 5 hurricane conditions.

Proposals must contain evidence of the proponent's experience and abilities in the specified area and other disciplines related to the technical and operational assessment, procurement support and implementation of like systems.

Other information required by DPS includes the submission of profiles and resumes of the staff available to be assigned to the project, references illustrating similar work performed and other information that clearly demonstrates qualifications and experience.

DPS anticipates evaluating the proposals based on the qualifications, requirements and needs described here and identifying the firms that best meet these needs. One or two firms may be invited for follow-up interviews and pricing discussions to make a final selection of the firm that we believe will best support our specific goals and requirements.

For clarity, the scope of the work will be divided into two sections. The first will address deliverables related to the territory wide LMR communications infrastructure, and the second will address the needs of the integrated All Hazards outdoor warning system (OWS).

10.1. LMR & Public Safety Communications Infrastructure

DPS envisions implementing a territory wide integrated P25 communications system incorporating the needs of Police, Fire, EMS, Emergency Management and other Public Safety or Government agencies as required. The proposed system must include address capacity, backhaul, redundancy and high availability, and fault tolerance. The infrastructure must address the need for enhanced reliability of PSAP operations, dispatch, and enhanced 9-1-1 services.

10.1.1. Detailed scope of Work

- 10.1.1.1.** The selected firm will develop design specifications and performance requirements of the LMR, PSAP, E911, Dispatch, Backhaul Network, and associated systems based on detailed stakeholder interviews of participating agencies as identified by DPS, and in process review required by Program Management.
- 10.1.1.2.** The selected firm will deliver a detailed Scope of Work for the final design, construction, installation, and integration of the systems envisioned in its design specifications and performance requirements.
- 10.1.1.3.** The SOW must identify all locations, by latitude and longitude and/or physical address, of all new and existing equipment of the envisioned system. Retained equipment will be identified with appropriate mitigation measures stated to ensure compliance with the overall specification and performance requirements of the newly envisioned system.



10.1.2. Needs Assessment and Recommendations

Under the direction of the DPS and/or their designated Program Manager, the successful consultant will undertake the following assessments and provide the following services:

- 10.1.2.1. Conduct a user needs assessment through an appropriate combination of surveys and interviews with all current or potential user agencies or stakeholders.
- 10.1.2.2. Identify and document key areas of concern or issue in the existing public safety communications systems, PSAP facilities, Dispatch, 911 Operations and Backhaul network.
- 10.1.2.3. Coverage assessments to include drive testing to identify dark/dead spots. The use of existing FCC license data may be used to generate accurate predictive modelling of the system's current coverage performance using industry accepted software (I.E. EDX Signal Pro). A follow-on assessment is required (even if the predictive modelling is not performed) using Received Signal Strength Indicator (RSSI) field testing using accepted industry standard field test equipment (I.E. Survey Technologies 9400 Field Test Kit). The data collection via field drive testing is required to assess mobile and portable radio coverage assessments. On-street portable radio coverage should use industry standard Delivered Audio Quality (DAQ) testing methods Maps of the results are required. This assessment must cover 100% of the 78 municipalities of Puerto Rico.
- 10.1.2.4. In-Building Coverage Testing – Assessment of in-building coverage is also required. National Fire Protection Association (NFPA) 1221 must be used to ensure appropriate quality standards are met such as described in Sections 9.6.7.5 and 9.6.8.2 for a DAQ of 3.0 or better across 90% of the buildings to be surveyed. This testing will be performed in no less than 250 buildings.
- 10.1.2.5. Current operational or feature shortcomings and future needs (i.e. encryption, location information, etc.).
- 10.1.2.6. Interoperability within the Commonwealth and with surrounding territories as required.
- 10.1.2.7. Anticipated growth within the Commonwealth and system requirements to accommodate that growth.
- 10.1.2.8. Paging, messaging, and alerting
- 10.1.2.9. Mobile or portable data and applications
- 10.1.2.10. Dispatch and response practices related to the radio communications system.
- 10.1.2.11. Identify and document anticipated future user applications, requirements, or needs.
- 10.1.2.12. FCC licensure.
- 10.1.2.13. Subscriber Unit condition and current life cycle status



- 10.1.2.14.** Interviews with all relevant stakeholders
- 10.1.2.15.** Survey all Law Enforcement Agencies, Fire Service agencies, EMS Agencies, Emergency Management Agencies, Commonwealth Department of Public Safety.
- 10.1.2.16.** Conduct an overall technical assessment of the current Public Safety radio dispatch system operations including:
- Coverage modeling.
 - Lifecycle and reliability.
 - Loading and usage.
 - Connectivity network.
 - RF sites and facilities throughout the 78 municipalities
 - Existing subscribers and capabilities.
 - Interoperable capabilities.
 - Primary and Backup Power.
 - System Maintenance Program
 - Vendors that are providing services to these facilities.
 - Identify end-of-life assessment of key components.
 - Add others or modify as required.
- 10.1.2.17.** An assessment of the other Commonwealth public safety communications subsystems:
- Paging subsystems.
 - Mobile Data.
 - Add others or modify as required.
- 10.1.2.18.** An assessment of the current dispatch facilities and related elements such as dispatch consoles, recorders, workstation furniture, space available for expansion, etc.
- 10.1.2.19.** An assessment of the existing microwave and link network facilities connecting the systems. Of interest is the sustainability of the current network facilities for supporting future public safety-grade land mobile radio capabilities
- 10.1.2.20.** Conduct a preliminary investigation into potentially available frequency spectrum to support system capacity and coverage expansion, including current spectrum



usage and availability of additional VHF, UHF, and 700/800 MHz frequency bands. Interface with the APCO Frequency Coordinator for the Commonwealth to assess unique circumstances within the Commonwealth, as well as Region 47 NPSPAC Regional Planning Committee.

10.1.2.21. Develop a draft report summarizing the findings of the technical systems assessment and the findings of the operational assessment based on user interviews and surveys. The report shall provide the following sections or information at a minimum with narratives (Word document/.PDF), Maps (.KMZ format), graphs, and tables (as needed) Pictures of each site visited are also required.

10.1.2.22. Findings

- Summary of the technical analysis of the current systems' hardware, software, and supporting infrastructure
- Equipment inventory and condition
- Equipment subject to impact due to narrowband mandate
- Lifecycle and support issues
- Site and facility metrics (address, Lat/Long coordinates, narrative description, and regional/district location)
- Site and facility conditions and issues
- Site ownership, lease, or contract data.
- Subscriber equipment inventory and status (Manufacturer Name, Model Name/Number, Purpose description)
- Gap analysis identifying the currently unmet communications needs of the user community (voice, alerting and data)
- Coverage
- Functional
- Operational
- Performance and loading
- Summary of findings on available frequency spectrum

10.1.3. Design Specifications and Performance Specifications

The envisioned PRPSWCI is an integrated early warning system and communications infrastructure. As such, two separate design plans and technical specifications are to be developed under this contract. The first is for the required island wide P25 LMR network including backhaul network, PSAP Next Generation 9-1-1, etc. The second is for the outdoor warning system including IPAWS integration, and other early warning systems.



The designs delivered will be used by the selected firm to develop and provide DPS a Request for Proposal to solicit offers from qualified firms to develop proposals for the final design, construction, installation, and implementation of the envisioned system. Therefore, each design must be of sufficient detail to clearly communicate the required system architecture, technical specifications, features, and performance requirements. These designs must be vendor independent, and not include vendor specific technologies, or limitations.

Each design must include a specific section addressing the integration requirement between the LMR network and the Outdoor Warning System network.

Each design must address the wind speed hazards as indicated by performing a query by location of <https://hazards.atcouncil.org/> a service provided by The Applied Technology Council.

The Applied Technology Council (ATC) is a nonprofit, tax-exempt corporation established in 1973 through the efforts of the Structural Engineers Association of California. ATC's mission is to develop and promote state-of-the-art, user-friendly engineering resources and applications for use in mitigating the effects of natural and other hazards on the built environment.

Each design must also contain the following:

- 10.1.3.1. A final list of all sites with addresses and coordinates. All existing sites and proposed new sites for all radio system and warning system components.
- 10.1.3.2. An evaluation of each existing site with any required upgrade, update, or mitigation actions required to ensure compatibility with the envisioned systems technical specifications and performance requirements.
- 10.1.3.3. Year, or date, structure was built, equipment was installed at each site.
- 10.1.3.4. An evaluation of each proposed site including identification of any environmental impacts, site feasibility, evaluation of existing structures, etc.
- 10.1.3.5. Design specifications and performance criteria for each site.
- 10.1.3.6. Maps identifying each existing and proposed site locations.
- 10.1.3.7. Photos of each existing site, existing equipment, proposed locations, and existing structures proposed to be utilized in the envisioned system.
- 10.1.3.8. Required physical security protection, such as fencing, for each existing or proposed site and remote monitoring, such as cameras or sensors, where applicable.
- 10.1.3.9. The expected useful life of all system components at proposed sites.
- 10.1.3.10. The proposed date of site construction is based on an assumed project start date.



10.1.3.11. On a site-by-site basis provide a detailed description of any expected geo-technical study required to meet the needs of the envisioned system.

10.1.3.12. For each system, detailed coverage analysis.

10.1.4. Cost Estimate and Schedule

10.1.4.1. An itemized cost estimate and budget narrative for all elements of the envisioned system. Lump-sum estimates are not eligible.

10.1.4.2. An itemized cost estimate of update, upgrade, or mitigation methods for all retained elements contained within the envisioned system.

10.1.4.3. The cost estimate should indicate when the funds are expected to be expended and line-item descriptions should be detailed enough to validate actual expenditures at closeout.

10.1.4.4. The source of methodology for developing the cost estimate must be identified.

10.1.4.5. A detailed work schedule for all elements described in the SOW should be provided in the Gant chart, or other suitable, format. Task interdependencies should be provided along with an identified critical path.

10.2. DPS Integrated All Hazards Public Alert and Warning System (and OWS)

DPS envisions implementing an all-hazards public alert and warning system that utilizes outdoor warning sites consisting of high-power speaker arrays capable of tone and multilingual voice alerts and messaging, that is seamlessly integrated with FEMA IPAWS leveraging the national EAS and WEA systems, that is integrated with distributed recipient mass notification systems, leverages social media, and interfaces with compatible interior mass notification systems within government owned or public buildings and facilities.

10.2.1. Detailed Scope of Work

10.2.1.1. The selected firm will develop design specifications and performance requirements of the outdoor warning system, FEMA IPAWS integration and implementation, and associated systems based on detailed stakeholder interviews of participating agencies as identified by DPS, and in process review required by Program Management.

10.2.1.2. The selected firm will deliver a detailed SOW for the construction, installation, and integration of the systems and integrations envisioned in its design specifications and performance requirements.

10.2.1.3. The SOW must identify all locations, by latitude and longitude or physical address, of all new and existing equipment of the envisioned system. Retained equipment will be identified with appropriate mitigation measures stated to ensure compliance with the overall specification and performance requirements of the newly envisioned system.

10.2.1.4. The SOW must identify any agencies within the territory with FEMA IPAWS Alerting Authority. Document existing or pending memorandums of



understanding with FEMA IPAWS, interagency agreements, delegated zones of authority, and operational procedures.

10.2.2. Needs Assessment and Recommendations

Under the direction of the DPS and/or their designated Program Manager, the successful consultant will undertake the following assessments and provide the following services:

- 10.2.2.1. Conduct a user needs assessment through an appropriate combination of surveys and interviews with all current or potential user agencies or stakeholders.
- 10.2.2.2. Identify and document key areas of concern or issue in the existing outdoor warning systems. There are an estimated 65 existing OWS towers.
- 10.2.2.3. Provide coverage mapping of existing outdoor warning systems based on field measurements completed in accordance with ANSI S12.14 providing C scale weighted results as the preferred method. In instances where conducting field measurement is not possible, modeling can be produced utilizing manufacturer rated output where manufacturers provide ANSI S12.14 testing results, or results from an independent certifying laboratory.
- 10.2.2.4. Conduct ambient noise level testing at 120 locations approved by DPS.
- 10.2.2.5. Current operational or feature shortcomings and future needs (i.e., encryption, location information, etc.).
- 10.2.2.6. Interoperability within the Commonwealth and with surrounding territories as required.
- 10.2.2.7. Anticipated growth within the Commonwealth and system requirements to accommodate that growth.
- 10.2.2.8. Current capabilities on alerting devices such as Tone, Voice, both.
- 10.2.2.9. Location of control stations, command and control software versions and capabilities, supported or non-supported products, end of life. PREMB has software for command and control.
- 10.2.2.10. System activation standard operating procedures and protocols.
- 10.2.2.11. Identify and document anticipated future user applications, requirements, or needs.
- 10.2.2.12. In the case of voice alerting capabilities transcribe all current messaging and languages supported.
- 10.2.2.13. At each warning tower location identify and document the following:



- Capture full site (ground to top) pictures of each site evaluated from the north, south, east, and west to provide a comprehensive view of the location for future analysis and planning.
- Capture pictures of each cabinet, alerting device, power feed, and all components attached to the warning tower.
- Identify and document any collocated utilities such as warning towers with telecommunications cabling, electrical grid cabling, etc.
- Type of siren head such as mechanical or electronic.
- Power feed to Remote Terminal Unit and Siren Controls.
- Does the site utilize battery for normal power or as backup.
- If batteries are present, document the quantity, make, model, size, and date of installation is present.
- Does the site utilize solar power?
- Type, height, and class of pole such as Wood, Steel, or Concrete.
- Age of pole and method of embedment or mounting.
- Photograph each control cabinet and remote terminal unit outside and inside.
- Photograph each siren head or high-power speaker array.
- Antenna type, height, gain.
- Document the current method of communication for the control system.
- Does the current control system utilize, or support, encryption?
- What is the OTA protocol format, such as DTMF, FSK, TTS, etc.?
- Number and location of controlling stations.
- For RF based control systems, frequency of operation, mode of operation such as simplex, duplex, location of applicable repeaters, make and model of base stations, repeaters, mobile units.
- Location, type, and height of control station, and/or repeater antennas.
- Research and document existing system manufacturers certification on P25 radio networks and method of connection such as through CEN, or subscriber and supported P25 protocols.



- 10.2.2.14.** Provide GPS coordinates, and physical street address with nearest crossroads for each proposed location taking note or proximity to utility power.
- 10.2.2.15.** At each proposed warning tower location, give a detailed description of any expected geo-technical study required to meet the envisioned system's needs.
- 10.2.2.16.** At each proposed warning tower location provide four pictures of the proposed with from each cardinal heading.
- 10.2.2.17.** Interviews with all relevant stakeholders
- 10.2.2.18.** Survey all Law Enforcement Agencies, Fire Service agencies, EMS Agencies, Commonwealth Department of Public Safety, PR Emergency Management Bureau (PREMB).
- 10.2.2.19.** Conduct an overall technical assessment of the current outdoor warning systems operations including:
- Coverage modeling.
 - Lifecycle and reliability.
 - Connectivity network.
 - RF sites and facilities.
 - Interoperable capabilities.
 - Primary and Backup Power
 - System Maintenance Program.
 - Add others or modify as required.
- 10.2.2.20.** An assessment of the other Commonwealth public alerting systems:
- FEMA IPAWS implementations, zones of authority, memorandums of understanding.
 - Wireless Emergency Alerts (WEA) capabilities.
 - Emergency Broadcast System (EBS) capabilities.
- 10.2.2.21.** An assessment of the current system activation facilities and related elements such as system software, computers or servers, encoders/decoders, workstation furniture, space available for expansion, etc.
- 10.2.2.22.** Develop a draft report summarizing the findings of the technical systems assessment and the findings of the operational assessment based on user interviews and surveys. The report shall provide the following sections or information at a minimum with narratives (Word document/.PDF), Maps (.KMZ



format), graphs and tables (as needed) Pictures of each site visited are also required.

10.2.2.23. Survey the Puerto Rico Highway and Transportation authority for digital signage assets suitable for public notifications.

10.2.2.24. Identify and evaluate governmental, educational, and public buildings to be interfaced into the public warning system. Determine the presence of internal mass notification systems and capabilities.

10.2.2.25. Findings:

- Summary of the technical analysis of the current systems hardware, software and supporting infrastructure.
- Equipment inventory and condition status (Manufacturer Name, Model Name/Number, Purpose description)
- Lifecycle and support issues.
- Site and facility metrics (address, Lat/Long coordinates, narrative description, and regional/district location)
- Site and Facility conditions and issues.
- Current coverage of existing outdoor warning devices.
- Gap analysis identifying the currently unmet coverage areas including population densities and planned growth.
- Functional capabilities and limitations of each outdoor warning system.
- Historical performance reliability where available from system logs and testing records for each outdoor warning system.
- Description of system status reporting capabilities, timing, etc.
- Report pm the environmental conditions in compliance with Section 8 of the Conditions of Approval included as Attachment A.
- Summary of findings.
- Develop a KMZ map of existing as well as proposed site locations for the conceptual design.

10.2.3. Design Specifications and Performance Specifications

The design specifications and performance specifications of the DPS Integrated All Hazards Public Alert and Warning System shall provide enough detail for qualified firms to produce fully priced proposals for the final design, installation, and implementation of the envisioned system.



The goal of the envisioned DPS Integrated Public Alert and Warning System is to provide reliable multilingual voice, tone, and text-based alerting to the public over multiple channels such as outdoor high power speaker arrays, digital signage, wireless emergency alerts, tone alert radio capabilities, and integration with FEMA IPAWS.

10.2.3.1. In addition to meeting the specific needs of the territory and its numerous stakeholders, the design and performance specification must additionally adhere to the following standards and guides.

- FEMA CPG 1-17
- FEMA Outdoor Warning Systems Technical Bulletin Version 2.0
- ANSI S12.14 Methods for the Field Measurement of the Sound Output of Audible Public Warning Devices Installed at Fixed Locations Outdoors.
- FEMA IPAWS Best Practices published June 2023.

10.2.3.2. The design must include two Outdoor Sound Propagation Models (OSPM). One model is to provide estimated coverage stated in range and decibels based on alert tone. The second model is to provide estimated coverage stated in range and decibels based on voice messaging.

10.2.3.3. DPS prefers modeling produced utilizing the SoundPLAN acoustical analysis software platform and use of the NORD 2000 standard. DPS requires the firm to provide the software configuration and methodology used for each OSPM for review and approval by DPS.

10.2.3.4. The OSPM models must provide a minimum of 15dB(C) over ambient for voice messaging.

10.2.3.5. The design shall ensure the site, structures, equipment, and its systems contained therein are using applicable industry standards. As an example, the “R56 Standards and Guidelines for Communication Sites” (commonly known as the Motorola R56 standard) includes instructions and requirements for the certified installation of communications equipment, infrastructure, and facilities. The use of the latest revision would then ensure compliance and that a contractor shall install to this standard.

10.2.3.6. The design of outdoor warning sites must address the wind speed hazards as indicated by performing a query by location of <https://hazards.atcouncil.org/> a service provided by The Applied Technology Council.

10.2.3.7. The design of the outdoor warning sites must utilize a pedestal mount steel utility pole. The pedestal and pole specifications must meet the wind load requirements previously stated and utilize an effective projected area (EPA) developed by the firm to represent the normal EPA of outdoor warning high-power speaker arrays, control cabinets, communications equipment, etc. This EPA is not to provide any benefit to a specific equipment manufacturer.

10.2.3.8. The design of the outdoor warning sites must include a primary power source and backup power source. The primary power source may provide operating



current for the high-power speaker array amplifiers or be used to charge the primary battery power supply. If the primary power supply is only used to charge the primary battery bank, the battery bank must be designed with additional capacity. Solar charging only is not desirable to DPS.

- 10.2.3.9. The design of the outdoor warning sites must include an air terminal lightning rod installed on the pole per NFPA 780, Standard for the Installation of Lightning Protection Systems.
- 10.2.3.10. The design for the outdoor warning sites must include a primary control channel integrated with the envisioned LMR systems and have a provision for a separate secondary control channel that offers the same level of system control as the primary channel. Limited system functionality over the secondary control channel will not be accepted.
- 10.2.3.11. The design for the outdoor warning system must consider the need to obtain system status of all outdoor warning sites within ten minutes of system activation over a secure communications channel.
- 10.2.3.12. The design for the outdoor warning system must include the ability to automatically receive FEMA IPAWS messages and activate them accordingly.
- 10.2.3.13. The design for the outdoor warning system must include the ability to originate FEMA IPAWS messages.
- 10.2.3.14. The design must include recommendations for the implementation of FEMA IPAWS based on the needs of DPS throughout the territory. This design must consider the zones of authority and any interagency agreements.
- 10.2.3.15. The design should include locations of Governmental, Educational, and public buildings with internal mass notification systems capable of external alarm interface.

11. MILESTONES AND SCHEDULE COMPLETION DATES

The following table identifies key milestones and schedules completion dates of the Contractor's Scope of Work. **This table must be filled out with your estimated targeted timeline and would be evaluated as part of your proposal.**

Activity / Milestone	Targeted Timeline
Notice to Proceed / Task Order issued to Proponent	
Project Kick-off Meeting *	
Bi-weekly Progress Reports**	
Conduct Site Visits ***	
Submit Deliverables for Owner Review and Comment (Program Manager to review and comment on behalf of DPS)	
Incorporate Comments and Resubmit	

* The Program Manager will coordinate the project kick-off meeting with the firm's Project Manager, Engineering / Technical Leads, and Project Controls personnel shall be in attendance.



** The firm shall provide within 15 calendar days after award of a task order, a detailed resource loaded schedule to be established as the project baseline schedule. Once received, the program manager will provide comments or approval of the schedule within 10 working days.

*** The firm shall coordinate all site visits with the Program Manager two weeks prior to the visit date.

12. OWNER PROVIDED INFORMATION

To the extent possible, DPS has provided an inventory of existing sites, locations, and equipment lists for the current systems in the attachments of this RFP.

13. PAYMENT SCHEDULE

The following table identifies the payment schedule and key milestones to be applied throughout the project.

14. PROPOSAL REQUIREMENTS, EVALUATION AND SELECTION PROCESS

The purpose of this RFP is to receive proposals that meet the FEMA HMGP project guidelines and DPS's requirements, clearly establishing the approach to successfully provide the services. DPS will review all the Proposals in a timely manner to determine if these comply with the requirements of the RFP. Proposals that do not meet the submission requirements or have omitted material documents may be rejected.

Each proposal meeting all submission requirements will be independently evaluated by the Evaluation Committee, which will assign a score for each evaluation criteria listed below, up to the maximum points, unless they are determined to be non-responsive according to the purposes and requirements of the RFP.

DPS may reserve the right to request additional information or clarifications after the Proposal due date, to assist the Evaluation Committee to gain additional understanding of the Proposal.

Travel and mileage expenses and all miscellaneous expenses, including travel, printing and other expenses will be the supplier's responsibility, as well as any cost not specified in the proposal.

15. SCORING CRITERIA

Each proposal meeting all submission requirements stated above will be independently evaluated by the Evaluation Committee, which will assign a score for each evaluation criterion listed, up to the maximum points.

Total points scored under each criterion have the following weights:

CRITERIA	WEIGHT PERCENTAGE
Price Proposal	20%
Experience and Capacity	35%
Project Approach	20%
Financial Capacity	15%
Commercial Terms	10%
Total	100%



The award of the RFP will be to the qualified and experienced Proponent whose proposals comply with the terms and conditions of this RFP.

The criteria will be graded using a score of 0 to 5:

- 0 = Information in the proposal was not applicable to the criteria or was omitted.
- 1 = Poor – For example, representing that the criteria presented in the proposal does not meet DPS requirements.
- 2 = Below Average, negative or disagree – For example, representing that the criteria presented in the proposal is judged to meet most of the requirements.
- 3 = Average, or neutral – For example, criteria judged as meeting all the minimum requirements set by DPS.
- 4 = Good, positive, or agree – For example, all criteria are met and improved when compared to DPS expectations.
- 5 = Excellent, very positive, or strongly agree – For example, representing that the criterion in the proposal best meets the requirements set by DPS, above all other proposals.

16. CONFIDENTIALITY OF RESPONSES & PROPRIETARY INFORMATION

Upon completion of the RFP process, DPS will make its report public regarding the procurement and selection process, which shall contain certain information related to this RFP process, except trade secrets and proprietary or privileged information of the Proponents. Information considered trade secrets or non-published financial data might be classified as proprietary by the Proponents. To ensure that documents identified by Proponents as confidential or proprietary will not be subject to disclosure by DPS, Proponents are required to submit a redacted copy of their proposal. The redacted copy must include a written explanation of why such labeled documents are confidential or proprietary, including why the disclosure of the information would be commercially harmful, specifically refer to any legal protection currently enjoyed by such information and why the disclosure of such information would not be necessary for the protection of the public interest, and request that the documents so labeled be treated as confidential by DPS. DPS reserves the right to make public the redacted copies of the proposals at the RFP process's end. If a redacted copy is not submitted by a Proponent, DPS will assume that the original copy of the proposal can be made public. Proposals containing substantial content marked as confidential or proprietary may be rejected by DPS. Provision of any information marked as confidential or proprietary shall not prevent DPS from disclosing such information if required by law. The executed contract(s), if any, and all prices set forth therein shall not be considered confidential or proprietary and such information may be made publicly available.

17. CONFLICTS OF INTEREST

Any contract awarded under this RFP will preclude the selected Proponents from representing before DPS any Proponent other than those Proponents who may be assigned under this Contract during its period of performance.

Proponents are required to provide a list of any other current or former advisory contracts it has/had with any Government Entity in Puerto Rico, or which bear any direct or indirect relation to the activities of the Government of Puerto Rico. Further, Proponent must provide a description of any



recent historical or ongoing legal proceedings, interviews or investigations being conducted by any U.S. law enforcement agencies involving the Proponent or any of their team members that are related to transactions executed in or on behalf of the Government of Puerto Rico and/or its public corporations. In addition, Proponent must provide a brief description of any work performed for any creditors or guarantors of the Government of Puerto Rico or any public corporation debt about their positions in Puerto Rico debt obligations. Indicate whether this activity is ongoing, and if not, when the prior assignment was concluded.

DPS may request information on any perceived conflict of interests and may request a list of direct or indirect relationships the Proponent or its professionals have with members of the Puerto Rico Public-Private Partnerships Authority (PPPA) or DPS.

The mere appearance of a conflict of interest shall constitute sufficient cause for the rejection of a proposal(s). DPS will cancel any contract executed pursuant to this RFP in the event of a conflict of interest, or if the appearance of conflict of interest is not immediately rectified to DPS's satisfaction.

18. REJECTION OF SUBMITTALS; CANCELLATION OF RFP; AND WAIVER OF FORMALITIES

This RFP process does not constitute a commitment by DPS to award the RFP and execute a contract. DPS reserves the right to accept or reject, in whole or in part, and without further explanation, any or all proposals submitted and/or cancel this solicitation and reissue this RFP or another version if deemed that doing so is in DPS best interest.

DPS reserves the right to waive minor informalities or deviations in a Proposal if in the best interest of DPS and if they do not affect the technical and professional requirements, payment terms, deliverables, warranties, and the contract terms and conditions.

19. OWNERSHIP OF SUBMITTAL

All materials submitted in response to this RFP shall become the property of DPS. Selection or rejection of a submittal does not affect this provision.

20. COST OF PREPARING RESPONSES

All costs associated with the response to this RFP are the sole responsibility of the Proponent. Neither DPS, the Government of Puerto Rico, nor any of its instrumentalities or entities of the Federal Government will be responsible for any expenses incurred or for the disclosure of any information or material received in connection with this RFP.

21. PROPOSAL ERRORS, OMISSIONS AND MODIFICATIONS

A Proponent may modify or withdraw its proposal at any time before the due date as established in the RFP Timeline. All modifications must be made in writing, will be affected, and submitted the same way as the original Proposal per this RFP. The Proponent shall submit its modified Proposal along with a cover letter with the modified RFP and shall include Proponent's name, contact information, mailing address, submission date, modification number, and the Project Title.



Timely withdrawal of a Proposal does not preclude Proponent's right to submit another Proposal provided if it is submitted by Due Date. Withdrawals must be notified before the due date of the proposals, in writing, through the messaging tab, or by deleting the uploaded proposal documents from the event before the closing date of the RFP.

DPS reserves the right to reject a proposal that contains a non-minor error or omission. DPS also reserves the right to request corrections of any minor errors or omissions and/or to request clarification or additional information from any or all Proponents. The determination of a non-minor or minor error or omission will be at DPS's sole discretion.

22. COMPLIANCE WITH APPLICABLE FEDERAL LAW, REGULATIONS, EXECUTIVE ORDERS
Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708).

- A. 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.
- B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section the contractor and any subcontractor responsible therefore 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 (A) of this section, in the sum of \$27 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 (A) of this section.
- C. Withholding for unpaid wages and liquidated damages. DPS 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 (B) of this section.
- D. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (A) through (D) 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 (A) through (D) of this section.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractor certifies 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 so certify to



the tier above it. 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 (COR3). Contractor shall also submit to DPS the required certification regarding lobbying pursuant to 44 C.F.R.

Remedies. Any violation or breach of terms of this Contract on the part of the Contractor or a subcontractor may result in the suspension or termination of this Contract or such other action, including the recovery of damages, as may be necessary to enforce the rights of DPS. The duties and obligations imposed by this Contract and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law. Upon a material breach by Contractor, DPS may utilize any remedy available by law, including precluding Contractor from further work with DPS in the future and recommend suspension and debarment.

Clean Air Act and the Federal Water Pollution Control Act.

- A. 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., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B. The Contractor agrees to report each violation to DPS and understands and agrees that DPS will, in turn, report each violation as required to assure notification to the COR3, the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

Changes. At any time changes in the Services or work to be performed within the general scope of this Contract may be made in accordance with Article 10, Changes/Extra Work; provided, however, that no changes shall be made to the scope of the Services that would render the costs incurred in the performance of this Contract unallowable or not allocable under, or outside the scope, or not reasonable for the completion of, Federal grant awards from FEMA or any other U.S. federal agency.

Sufficiency of Funds. The Contractor recognizes and agrees that all or a portion of the funding for this Contract shall be derived from assistance awarded by Federal agencies of the United States of America to DPS or the Government of Puerto Rico. As part of its obligations under this Contract, Contractor shall ensure that the work performed hereunder is eligible for funding by complying with all applicable Federal law, regulations, executive orders, Federal agency policy, procedures, directives, and guidelines. If during the term of this Contract, Federal or local funding is reduced, deobligated, or withdrawn, DPS may reduce the scope of or terminate the Contract, without penalty, by providing written notice to Contractor of the changes in scope or termination. DPS shall not be obligated to pay nor shall be held financially liable if any work performed by Contractor under this Contract is deemed ineligible by any Federal agency. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to DPS, Contractor, or any other party pertaining to any matter resulting from this Agreement.

FEMA Disaster Assistance Survivor/Registrant Data.

- A. If the Contractor has access to Disaster Assistance Survivor/Registrant data or any other personally identifiable information, the Contractor shall comply with the provisions of the Terms and Conditions for Sharing FEMA Disaster Assistance Survivor/Registrant Data with State



Governments set forth in the FEMA-Government of Puerto Rico Contract for FEMA-4339-DR-PR.

- B. The Contractor shall indemnify, defend, and hold harmless DPS and the Government of Puerto Rico for any and all costs associated with the defense of that litigation, including costs and attorneys' fees, settlements, or adverse judgments arising from the Contractor's failure to comply with the requirements under this contract.

Costs. All costs incurred by the Contractor in performance of this Contract must be in accordance with the cost principles of 2 C.F.R. pt. 200, Subpart E. DPS shall not be required to make payments to the Contractor for costs which are found to be contrary to the cost principles 2 C.F.R. pt. 200, Subpart E. Financial Management System. The Contractor's financial management system shall provide for the following:

- A. accurate, current, and complete disclosure of the financial results of this Contract and any other contract, grant, program, or other activity administered by the Contractor;
- B. records adequately identifying the source and application of all Contractor funds and all funds administered by the Contractor which shall contain information pertaining to all contract and grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income, and shall be segregated by contract or on a contract-by-contract basis;
- C. effective internal control structure over all funds, property, and other assets, sufficient to allow the Contractor to adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;
- D. comparison of actual outlays with budgeted amounts for this Contract and for any other contract, grant, program, or other activity administered by the Contractor;
- E. accounting records supported by source documentation;
- F. procedures to minimize elapsed time between any advance payment issued and the disbursement of such advance funds by the Contractor; and
- G. procedures consistent with the provisions of any applicable policies of the Federal Government and the Government of Puerto Rico and procedures for determining the reasonableness, allowability and allocability of costs under this Contract.

Penalties, Fines, and Disallowed Costs. In the event that any U.S. Federal agency or the Government of Puerto Rico disallows or demands repayment for costs incurred in the performance of this Contract, or if any penalty is imposed due to an act or omission by the Contractor, the Contractor shall be solely responsible for such penalty, disallowed costs, or repayment demand, and shall reimburse DPS in full within ten days of receiving notice from DPS of such penalty, disallowance, or repayment demand. Any monies paid by the Contractor pursuant to this provision shall not relieve the Contractor of liability to DPS for damages sustained by DPS by virtue of any other provision of this Contract.

Debarment, Suspension, and Ineligibility.

- A. 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 represents and warrants 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). The Contractor further represents and warrants that it will not enter into any contracts or subcontracts with any



individual or entity which has been debarred, suspended, or deemed ineligible under those provisions. During the term of this Contract, the Contractor will periodically review SAM.gov and local notices to verify the continued accuracy of this representation. The Contractor shall require all subcontractors at every tier to comply with this requirement.

- B. 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.
- C. This certification is a material representation of fact relied upon by DPS. 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 the Government of Puerto Rico and DPS, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

Reporting Requirements. The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by DPS.

Review of Laws. The Contractor certifies that it will access online and read each law that is cited in the aforementioned clauses and that, in the event it cannot access the online version, it will notify DPS in order to obtain printed copies of the laws. Not requiring a printed copy of the laws to DPS will be evidence that the Contractor was able to find it online and read it as required.

Notice of Federal Emergency Management Agency (FEMA) Reporting Requirements and Regulations.

- A. DPS is using Federal grant funding awarded or administered by FEMA to the Government of Puerto Rico and/or DPS to pay, in full or in part, for the costs incurred under this Contract. As a condition of FEMA funding under major disaster declaration FEMA-4339-DR-PR, FEMA requires the Government of Puerto Rico and DPS to provide various financial and performance reporting. The Contractor agrees to provide all information, documentation, and reports necessary to satisfy these reporting requirements. Failure by the Contractor to provide information necessary to satisfy these reporting requirements may result in loss of Federal funding for this Contract, and such failure shall be a material breach of this Contract;
- B. Applicable Regulations and Policy. Applicable regulations, FEMA policy, and other sources setting forth these reporting requirements include, but are not limited to:
 - (1) 2 C.F.R. § 327 (Financial Reporting);
 - (2) 2 C.F.R. § 200.328 (Monitoring and Reporting Program Performance);
 - (3) Performance and financial reporting requirements set forth in 2 C.F.R. Part 206.

Access to Records.

- A. The Contractor agrees to provide DPS, the Government of Puerto Rico, the FEMA Administrator, the Secretary of HUD, 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.

- B. 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.
- C. The Contractor agrees to provide the FEMA Administrator, the Secretary of HUD, or his authorized representatives access to work sites pertaining to the work being completed under the Contract.

Retention requirements for records. The Contractor agrees to maintain all books, records, accounts, and reports and all other records produced or collected in connection with this Contract for a period of not less than three years from the date of submission by DPS or the Puerto Rico Emergency Management Agency, on DPS's behalf, of the final expenditure report for disaster declaration FEMA-4339-DR-PR, as reported to FEMA. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. It is the responsibility of the Contractor to inquire of DPS whether the aforementioned final expenditure report has been submitted.

Program Fraud and False or Fraudulent Statements 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.

Procurement of Recovered Materials. In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are Environmental Protection Agency ("EPA")- designated items unless the product cannot be acquired

- A. Competitively within a timeframe providing for compliance with the Contract performance schedule;
- B. Meeting Contract performance requirements; or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

Energy Efficiency. The Contractor agrees to comply with the requirements of 42 U.S.C. § 6201, which contain policies relating to energy efficiency that are defined in the Government of Puerto Rico's energy conservation plan issued in compliance with said statute.

Equal Employment Opportunity. During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.

- B. 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- D. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining Contract or other contract or understanding (if any) a notice advising the labor union or workers' representative of the Contractor's commitments under section 202 of the US Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor will comply with all provisions of Executive Order 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The Contractor will furnish all information and reports required by Executive Order 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by DPS, the Government of Puerto Rico, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor will include the provisions of paragraphs (A) through (H) in every subcontract or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, 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 may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a



subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Age Discrimination Act of 1975. The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

Americans with Disabilities Act. The Contractor shall comply with the appropriate areas of the Americans with Disabilities Act of 1990, as enacted and from time to time amended, and any other applicable federal regulation. A signed, written certificate stating compliance with the Americans with Disabilities Act may be requested at any time during the term of this Contract.

Title VI of the Civil Rights Act of 1964. The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Section 504 of the Rehabilitation Act of 1973, as Amended. The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

Drug-Free Workplace. The Contractor shall maintain a drug-free work environment in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8101 et seq.) and implementing regulations at 2 C.F.R. Part 3001.

Compliance with Laws, Regulation and Executive Orders. The Contractor acknowledges that FEMA financial assistance will be used to fund this Contract. The Contractor shall comply with all applicable Federal and Government of Puerto Rico law, regulations, executive orders, policies, procedures, and directives, including but not limited to all Federal Cost Principles set forth in 2 C.F.R. Part 200, and all applicable FEMA regulations in 44 C.F.R. Chapter I, and 2 C.F.R. Part 200.

Provisions Required by Law Deemed Inserted. Each and every provision required by law regulation, executive order, policy, procedure, directive, Federal grant award or agreement, or cooperative agreement with any Federal agency to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein. If, through mistake or otherwise, any provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.

Agreement to Execute Other Required Documents. Contractor and all subcontractors, by entering into the Contract, understand and agree that funding for the Services is provided under Federal programs with specific contracting requirements. To the extent any such requirement is not otherwise set forth



herein, Contractor agrees to execute such amendments or further agreements as may be necessary to ensure that DPS receives Federal funding for this Contract.

U.S. Department of Homeland Security Seal, Logo, and Flags. The Contractor shall not use the U.S. Department of Homeland Security seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

No Obligation by the Federal Government. DPS and the Contractor acknowledge and agree that the Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to DPS, Contractor, or any other party pertaining to any matter resulting from the contract.

General. All contracts shall contain a clause identifying the type of Contract and the mandatory clauses contained on the latest released HUD forms, as applicable to the Contract type. All contracts, except for general management consulting services, will include performance requirements and liquidated damages.

Puerto Rico Energy Conservation Plan. Contractor must act in compliance, when applicable, with the mandatory standards and policies relating to energy efficiency which are contained in the Commonwealth's energy conservation plan.

Patent Rights. All contracts are subject to the patent rights with respect to any discovery or invention which arises or is developed during or under such Contract in accordance with 37 C.F.R. Section 401.2(a) and 37 C.F.R. Part 401.

Davis Bacon Act and Copeland Anti-Kickback Act

- A. Contractor. 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.
- B. Subcontracts. Contractor or subcontractors shall insert in any subcontracts the clause above and such other clauses as FEMA or HUD may by appropriate instructions require, and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- C. 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.

HUD Section 3 Clause

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implements section 3. As evidenced by their execution of this contract, the parties to this



- contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. Contractor agrees to send to each labor organization or representative of workers with which Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
 - D. Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. Contractor will not subcontract with any subcontractor where Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
 - E. Contractor will certify that any vacant employment positions, including training positions, that are filled (i) after Contractor is selected but before the contract is executed, and (ii) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
 - F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
 - G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

HUD Section 3 Requirements

- A. Section 3 clause required in subcontracts. All Section 3 covered contracts must include a Section 3 clause in accordance with 24 C.F.R. § 135.38. A Section 3 covered contract means a contract or subcontract (including a professional service contract) awarded by a recipient or Contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. "Section 3 covered contracts" do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.
 - (1) "Section 3 covered assistance" means assistance provided under any HUD housing or community development program that is expended for work arising in connection with



- public construction projects (which includes other buildings or improvements, regardless of ownership).
- (2) A "Section 3 covered project" means, among other things, public construction which includes buildings or improvements (regardless of ownership) assisted with community development assistance.
- B. Section 3 minimum contracting goals. Contractor must endeavor to meet the following minimum goals for contracting under HUD funded contracts, as applicable:
- (1) Arising in connection with public construction shall be awarded to Section 3 businesses. Public construction includes infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, installing conduits for utility services, etc.
 - (2) Three (3) percent of the total dollar amount of all non-construction Section 3 covered contracts shall be awarded to Section 3 businesses. Section 3 covered non-construction projects include maintenance contracts, including lawn care, re-painting, routine maintenance, HVAC servicing, and professional service contracts associated with construction (e.g., architectural, engineering, legal services, accounting, marketing, etc.).
- C. A Section 3 business is one that can demonstrate it meets one of the following criteria:
- (1) 51 percent or more owned by Section 3 residents; or
 - (2) has permanent, full-time employees at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
 - (3) has a commitment to sub-contract in excess of 25 percent of the total dollar award of all sub-contracts to be awarded to such businesses described above.
- D. Order of preference for Section 3 business concerns contracting opportunities. Contractor and any subcontractors shall direct their efforts to award section 3 covered contracts, to the greatest extent feasible, to section 3 business concerns in the following order of priority (24 C.F.R. § 135.36), where feasible:
- (1) section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses);
 - (2) applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youth build programs (category 2 businesses); and
 - (3) other section 3 business concerns.
- E. Eligibility for preference. A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a section 3 business concern as defined in 24 C.F.R. § 135.5.
- F. Ability to complete contract. A section 3 business concern seeking a contractor a subcontract shall submit evidence to Contractor or Subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the Party awarding the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (2 CFR 200.318(h).) This regulation requires consideration of, among other factors, the potential Contractor's record in complying with public policy



requirements. Section 3 compliance is a matter properly considered as part of this determination.

Additional Fair Labor Standards Provisions (HUD Form 4010)

- A. Applicability. The project or program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.
- B. Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (1) (a) Any class of laborers or mechanics which is not listed in the wage determination, and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (b) If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD



- or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215- 0140.)
- (c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
 - (d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (B)(1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (2) Whenever the minimum wage rate prescribed in the contract for a class of laborer or mechanics includes a fringe benefit which is not expressed as an hourly rate, Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (3) If Contractor does not make payments to a trustee or other third person, Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis- Bacon Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
- C. Withholding. HUD or its designee 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 Contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to Contractor, disburse such amounts withheld for and on account of Contractor or Subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.
- D. Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section I(b)(2)(B) of the



Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section I(b)(2)(B) of the Davis- Bacon Act, Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

- (1) (a) Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a Party to the contract, but if the agency is not such a Party, Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e. g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Website at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a Party to the contract, but if the agency is not such a Party, Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a Subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)
- (b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work



performed, as specified in the applicable wage determination incorporated into the contract.

- (c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).
 - (d) The falsification of any of the above certifications may subject Contractor or any Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- (2) Contractor or Subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Contractor or Subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

E. Apprentices and Trainees.

- (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to contractors to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, Contractor will no longer be



permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
 - (3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- F. Compliance with Copeland Act requirements. Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.
 - G. Subcontracts. Contractor or Subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, 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 the contract clauses in this paragraph.
 - H. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a Subcontractor as provided in 29 CFR 5.12.
 - I. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
 - J. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between



Contractor (or any of its Subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

K. Certification of Eligibility.

(1) By entering into this contract, Contractor certifies that neither it (nor he or she) nor any Person or firm who has an interest in the Contractor's firm is a Person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration. makes, utters or publishes any statement knowing the same to be false. shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

L. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by Contractor or any Subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

M. Health and Safety. The provisions of this paragraph are applicable where the amount of the prime contract exceeds \$100,000:

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each Subcontractor. Contractor shall take such action with respect to any Subcontractor as the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

Buy American—Construction Materials Under Trade Agreements (Oct 2016)

A. Definitions. As used in this Article—

(1) **Caribbean Basin country construction material** means a construction material that—

(a) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(b) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was



- transformed.
- (2) Commercially available off-the-shelf (COTS) item—
- (a) Means any item of supply (including construction material) that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - (b) Does not include bulk cargo, as defined in 46 U.S.C. § 40102(4), such as agricultural products and petroleum products.
- (3) **Component** means an article, material, or supply incorporated directly into a construction material.
- (4) **Construction material** means an article, material, or supply brought to the Site by the Contractor or Subcontractor for incorporation into the building or Work. The term also includes an item brought to the Site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or Work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the Site. Materials purchased directly by the Government are supplies, not construction material.
- (5) **Cost of components** means—
- (a) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (b) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.
- (6) **Designated country** means any of the following countries:
- (a) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);
 - (b) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);
 - (c) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
 - (d) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica,



Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

- (7) **Designated country construction material** means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.
 - (8) **Domestic construction material** means—
 - (a) An unmanufactured construction material mined or produced in the United States;
 - (b) A construction material manufactured in the United States, if—
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic; or
 - (ii) The construction material is a COTS item.
 - (9) **Foreign construction material** means a construction material other than a domestic construction material.
 - (10) **Free Trade Agreement country construction material** means a construction material that—
 - (a) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
 - (b) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.
 - (11) **Least developed country construction material** means a construction material that—
 - (a) Is wholly the growth, product, or manufacture of a least developed country; or
 - (b) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.
 - (12) **United States** means the fifty (50) States, the District of Columbia, and outlying areas.
 - (13) **WTO GPA country construction material** means a construction material that—
 - (a) Is wholly the growth, product, or manufacture of a WTO GPA country; or
 - (b) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.
- B. Construction materials.
- (1) This Article implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. § 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA



and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

- (2) The Contractor shall use only domestic or designated country construction material in performing this Contract, except as provided in paragraphs (B)(3) and (B)(4) of this Article.
 - (3) The requirement in paragraph (B)(2) of this Article does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: None
- (4) The Contracting Officer may add other foreign construction material to the list in paragraph (B)(3) of this Article if the Government determines that—
 - (a) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (b) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (c) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

C. Request for determination of inapplicability of the Buy American statute.

Any Contractor request to use foreign construction material in accordance with paragraph (B)(4) of this Article shall include adequate information for Government evaluation of the request, including:

- (a) A description of the foreign and domestic construction materials;
- (b) Unit of measure;
- (c) Quantity;
- (d) Price;
- (e) Time of delivery or availability;
- (f) Location of the Work;
- (g) Name and address of the proposed supplier; and
- (h) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (B) of this Article.
 - (i) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (D) of this Article.
 - (ii) The price of construction material shall include all delivery costs to the Site and any applicable duty (whether or not a duty-free certificate may be issued).
 - (iii) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (i) If the Government determines after Contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer shall modify the Contract to allow use of the foreign construction material. However, when the basis for the exception is the



unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (B)(4)(a) of this Article.

- (j) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

- D. To permit evaluation of requests under paragraph (C) of this Article based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) ¹
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

- E. Include all delivery costs to the Site and any applicable duty (whether or not a duty-free entry certificate is issued).
- F. List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.
- G. Include other applicable supporting information.

Notes:

- (1) List in paragraph (B)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, other than designated country construction material.
- (2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (B)(4)(i).

H. Restrictions on Certain Foreign Purchase

Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this Contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 C.F.R. chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as



are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 C.F.R. chapter V and/or on OFAC's Web site at:

<http://www.treas.gov/offices/enforcement/ofac>

The Contractor shall insert this Article, including this paragraph (3), in all Subcontracts.

Inconsistency Between English Version and Translation of Contract

In the event of inconsistency between any terms of this Contract and any translation into another language, the English language meaning shall control.

Bonding Requirements

Contractor shall comply with bonding requirement pursuant to 2 CFR 200.326:

- A bid guarantee of five percent (5%) of the bid price from each proposer. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his or her bid, execute such contractual documents as may be required within the time specified.
- A performance bond for one hundred percent 100% of the Agreement price. The "performance bond" to be executed in connection with the contract.
- A "payment bond" for 100% of the agreement price, executed in connection with the contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided.



23. ACCEPTANCE FORM

ACCEPTANCE FORM

This form must be completed and signed by a person duly authorized by the proponent and included with the proposal when it is submitted to the DPS.

The attached proposal is submitted in response to the Request for Proposals No. **DSP-RFP-2024-07** of the Department of Public Safety. The proposer agrees that all the terms and conditions of the Request for Proposals No. **DSP-RFP-2024-07** and agrees that any inconsistencies in our proposal will be considered as if it had not been written and as if it did not exist. I certify that we have read and examined the Request for Proposals, including all its sections, and that we have conducted prudent and reasonable investigations to prepare the proposal. We agree to comply with everything outlined in our proposal.

Company:	Address:
Telephone:	Fax:
Website address:	DUNS Number or SAM-UEI Number
Name of Authorized Representative:	Title:
Cell phone:	Email:
Signature:	Date:

FAILURE TO COMPLETE THIS FORM AND SUBMIT IT WITH YOUR PROPOSAL MAY RESULT IN YOUR PARTICIPATION IN THE PROCESS.

