

QUOTATIONS FOR SMALL PURCHASES (QSP) No. QSP0001, Repair of Damaged Wood  
Balcony

**Supplemental Instructions to Quoters & Contractors (SIQC)  
Construction - (QSP Attachment D)**

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1.0 GENERAL CONDITIONS.

1.1 **Applicability.** If referred to within the text of such, this SIQC shall be applicable to all construction-related Quotations for Small Purchases (QSP) solicitations that the Housing Authority of the City of San Buenaventura (hereinafter, "the Agency") conducts and shall be applicable to any contract that the Agency awards to or signs with any firm, agency or individual pursuant to that QSP. A copy of this SIQC shall be made available to any actual or prospective quoter, or Contractor who does business with or intends to do business with the Agency.

1.1.1 **HUD Forms.** Unless otherwise specified within the QSP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within this SIQC, the provision in the QSP or contract document shall govern. Further, in the case of any attached HUD forms, most specifically: HUD-5369-A (11/92); HUD-5369 (10/2002); HUD-5370-EZ (1/2014), the information within such HUD form(s) shall govern over any other information issued, especially any information issued within any Agency-created forms that are issued as a part of this solicitation.

1.2 **Definitions** (pertaining to all QSP documents issued by the Agency pertaining to this QSP, including the attachments and the ensuing contract):

1.2.1 **"Agency"** is the Housing Authority of the City of San Buenaventura. Unless otherwise defined herein or within the ensuing contract, whenever the term "the Agency" is used without clearly designating a responsible Agency staff person, the quoter(s) shall assume that responsibility for that item rests with the CO.

1.2.2 **"Contract"** refers to the fully executed written agreement that ensues from the QSP. Whereas all QSP documents are included, by reference, as a part of the ensuing contract, when "contract" is referred to within the QSP documents such is referring to both the QSP documents and the ensuing contract document.

1.2.3 **"Contracting Officer (CO)"** - When named within an QSP document shall refer to either the ED or the person he/she has delegated such responsibilities to.

1.2.4 **"Contractor"** and the term "successful quoter" may be used interchangeably.

1.2.5 **"Days"** unless otherwise directed, shall refer to calendar days.

1.2.6 **"CEO"** is the Chief Executive Officer.

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- 1.2.7 "Herein" shall refer to all documents issued pursuant to the noted QSP, including the QSP documents and the attachments.
- 1.2.8 "HUD" is the United States Department of Housing and Urban Development. HUD is the Federal agency that the Agency receives some funding from; however, pertaining to this QSP, correspondences, including quote submittals, received from each quoter must exhaust all provisions contained herein prior to contacting HUD (i.e. in the case of a protest).
- 1.2.9 "Offer" is the quote submittal referred to within the following Section 1.2.14 that the quoter delivers to the Agency in response to the QSP.
- 1.2.10 "Offeror" or "Offerors" are the quoters.
- 1.2.11 "Parties" - When "the parties," "both parties" and/or "either party" is stated within the QSP documents or the contract, such refers to the Agency and the successful quoter(s).
- 1.2.12 "Quote" and/or "Quote Submittal" is the "hard copy" document that the quoter is required to, as detailed within the QSP document, deliver to the Agency.
- 1.2.13 "Protestant" is a prospective or actual quoter who feels that he/she has been treated inequitably by the Agency and wishes the Agency to correct the inequitable condition or situation. To be eligible to file a protest with the Agency pertaining to an QSP or contract, the protestant must have been involved in the QSP process in some manner as a prospective quoter (i.e. registered and received the QSP documents).
- 1.2.14 "Prospective Quoter" or "Quoter" - A prospective quoter is a firm or individual who has been notified of the QSP solicitation and/or who has requested and/or received the QSP documents and is considering responding with a quote; a quoter is a firm or individual who has submitted a quote in response to the QSP. All terms and conditions shall apply equally to all prospective and/or actual quoters, though prospective quoters may not, after the deadline set for receiving quotes, receive further notices pertaining to that QSP—meaning, certain notices (such as the Notice of Results of Evaluation) are typically only delivered to actual quoters and not to all prospective quoters.
- 1.2.15 "Quotations for Small Purchases" (QSP) is the competitive quote process allowed by HUD, especially as defined within Chapter 5 of HUD Procurement Handbook 7460.8 REV 2.

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- 1.2.16 "QSP Document(s)" - Whether stated in the singular or the plural, such refers to the body of documents, including attachments and the information posted on the [ha.economicengine.com](http://ha.economicengine.com) eProcurement Marketplace, that the Agency makes available to all prospective quoters wherein is detailed the Agency's requirements.
- 1.2.17 "Solicitation" or "Competitive Solicitation" is the QSP process detailed herein.

2.0 CONDITIONS TO QUOTE.

- 2.1 **Pre-Qualification of Quoters.** Prospective quoters will not be required to pre-qualify in order to submit a quote. However, all quoters will be required to submit adequate information showing that the quoter is qualified to perform the required work (i.e. Profile of Firm Form and required resumes). Failure by the prospective quoter to provide the requested information may, at the Agency's discretion, eliminate that quoter from consideration, provided that all quoters were required to submit the same information as a part of the QSP process (in the case of a successful quoter(s), these requirements shall also apply in the context of the successful quoter or quoters).
- 2.2 **QSP Forms, Documents, Specifications, and Drawings.**
- 2.2.1 It shall be each prospective quoter's responsibility to, prior to submitting a quote in response to the QSP, examine carefully and, as may be required, properly complete and submit all documents issued pursuant to this QSP.
- 2.2.2 Unless otherwise instructed, specifications and drawings (if provided) do not purport to show all the exact details of the work. They are intended to illustrate the character and extent of the performance desired under the proposed contract and may be supplemented or revised from time to time.
- 2.2.3 The Agency shall reserve the right to, prior to award, revise, change, alter or amend any of the instructions, terms, conditions, and/or specifications identified within the QSP documents issued, within any attachment or drawing, or within any addenda issued; such notice shall be delivered in writing to each prospective and/or actual quoter. Such changes that are issued before the deadline for receipt of quotes shall be binding upon all prospective quoters. Such changes that are issued after the receipt of quotes, but prior to award shall be binding upon all parties that have submitted quotes; however, such parties shall be allowed to reject such changes by, within 5 days of receipt of such written notice, withdrawing his/her quote. Such withdrawal must be delivered, in writing, to the CO within the 5-day deadline period.

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2.3 Quote Preparation, Submission, and Receipt by the Agency.

- 2.3.1 **Required Forms.** All required forms furnished by the Agency as a part of the QSP document issued shall, as instructed, be fully completed and submitted by the quoter. Such forms may be completed in a legible hand-written fashion, by use of a typewriter, or may be downloaded and completed on a computer. If, during the download, a form becomes changed in any fashion, the quoter must "edit" the form back to its original form (for example, signature lines must appear on the page the line was originally intended to be on).
- 2.3.1 **Manner of Submission.** The quote submittal shall be submitted in the manner detailed within the QSP document. Failure to submit the quote in the manner specified may result in a premature opening of, post-opening of, or failure to open and consider that quote, and may, at the discretion of the CO, eliminate that quoter from consideration for award.
- 2.3.2 **Time for Receiving Quotes.** Quotes received prior to the time set as the deadline for the receipt by the Agency of the quote submittal shall be securely kept, unopened, by the Agency. The CO, whose duty it is to open such quotes, will decide when the specified time has arrived. No quote received after the designated deadline shall be considered, except as detailed Section 5 of form HUD-5369 (10/2002), *Late Submissions, Modifications and Withdrawal of Quotes*, each form attached hereto.
- 2.3.3.1 Quoters are cautioned that any quote submittal that may be time-stamped as being received by the Agency after the exact time set as the deadline for the receiving of quotes shall be returned unopened to the quoter. Any such quotes inadvertently opened shall not be considered but shall be ruled to be invalid. No responsibility will attach to the Agency or any official or employee thereof, for the pre-opening of, or the failure to open a quote not properly addressed and identified.
- 2.3.4 **Public Opening of Quotes.** Pursuant to the QSP process, quotes shall be publicly opened at the day and time published in the QSP documents. At the quote opening, only the name of the company and the pertinent cost information will be read aloud (for instance, in the case of quotes with multiple line items in a number that it is not realistic to read all item, only the actual or calculated total may be read. The full determination of responsiveness (i.e. minimum compliance with the requirements of the QSP) and responsibility will be conducted by an Agency official in private after the public quote opening. Persons other than Agency staff involved in this process are not allowed to be present during the responsive and responsibility evaluations, nor may they inspect the quotes until after award has been completed.

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- 2.3.5 **Withdrawal of Quotes.** Quotes may be withdrawn as detailed within Section 5 of form HUD-5369 (11/2002), *Late Submissions, Modifications and Withdrawal of Bids*, each form attached hereto. Negligence on the part of the quoter in preparing his/her quote confers no right of withdrawal or modification of his/her quote after such quote has been received and opened.
- 2.3.6 **Conflicting Conditions.** Any provisions detailed within any of the QSP documents which may be in conflict or inconsistent with any of the paragraphs in any of the other QSP documents, including attachments, shall be void to the extent of any such conflict or inconsistency. Further, as stated within Section 1.1.1 of this SIQC, unless otherwise specified within the QSP or contract documents, in the event that any provision in any document listed herein conflicts with any provision within this SIQC, the provision in the QSP or contract document shall govern.
- 2.3.7 **Interpretations.** No official oral interpretation can be made to any quoter as to the meaning of any instruction, condition, specifications drawing (if any), or any other document issued pertaining to this QSP. Every request for an official interpretation shall be made by the prospective quoter, in writing, pursuant to the schedule set within the QSP document issued and as directed by the Agency. Official interpretations will be issued in the form of addenda, which will be delivered to each quoter; but it shall be the prospective quoter's responsibility to make inquiry as to addenda issued. All such addenda shall become a part of the QSP documents and the proposed contract with the successful quoter and all quoters shall be bound by such addenda, whether or not received by the prospective or successful quoter(s).

2.4 **Exceptions to Specifications.**

- 2.4.1 A quoter may take exception to any of the quote documents or any part of the information contained therein, by submitting, in writing to the CO, at least 10 days prior to the quote deadline, a complete and specific explanation as to what he/she is taking exception to. Proposed alternate documents or information must also be included. A response by the Agency will be issued in writing within 5 days of receipt of such exception request. The Agency reserves the right to agree with the prospective quoter and issue a revision to the applicable QSP requirements or may reject the prospective quoter's request.
- 2.4.2 When taking exception, prospective quoters must quote services that meet the requirements of the QSP documents. Exceptions to the specification and/or approved "equal" requests may be discussed at the scheduled pre-quote conference (if scheduled). All verbal instructions

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issued by the Agency officers not already listed within the QSP documents shall only become official when issued as addenda or as a written answer issued pursuant to receipt of a written question.

2.5 Lump Sum Cost Breakdown (LSCB).

2.5.1 The Agency reserves the right to, at any time, request and receive from any or all quoters a LSCB of any or all the costs quoted. The quote documents constitute an outline of the work to be completed by the quoter. These documents are intended to include all major items, and the lump sum cost breakdown computed therefrom will be the maximum compensation for all work and materials whatsoever furnished by the quoter in order to comply with the quote documents in their present form, whether or not indicated in the approximate quantities or pertaining to the items of work as listed.

2.5.1.1 The purpose of this LSCB will serve the Agency in two distinct areas:

2.5.1.1.1 **Prior to award of Quotes.** The Agency may request a LSCB for any or all items reflected within the QSP document as "lump sum" for the purpose of determining an unbalanced cost quote. The CO, using acceptable methods dictated by the industry, shall conduct the analysis.

2.5.1.1.2 **After Award.** The Agency may request a LSCB for any or all items reflected within the QSP document as "lump sum" for the purpose of making partial payments to the successful quoter.

2.5.1.1.3 **Increase/Decrease.** Under no circumstances, may any cost item reflected as "lump sum" be increased and/or decreased as a result of the LSCB analysis.

3.0 QUOTE EVALUATION.

3.1 **Quote Opening Results.** It is understood by all quoters/prospective quoters that the quotes received will not be publicly opened and read aloud and the results will not immediately be a matter of public record; meaning, the Agency will record all quotes on a quote tabulation form and make such tabulation available to all quoters after the Agency has made a final decision as to the successful quoter(s).

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- 3.1.1 Quote documents submitted by the quoter(s) shall not be a matter of public record until after award has been completed. The Agency shall, however, upon request, verify that the quote documents submitted are/were acceptable.
- 3.2 Award of Quote(s). The successful quoter shall be determined as the responsive and responsible quoter who submits the lowest actual or calculated cost as detailed with the QSP, as long as he/she is able to deliver the specified items in a timely manner and it is, in the opinion of the Agency, to the best interests of the Agency to accept the quote. All quoters will be notified in a timely manner of the results of the evaluation after award has been completed.
- 3.3 Rejection of Quotes.
- 3.3.1 The Agency reserves the right to, at any time during the quote process, reject any or all quotes received. In the case of rejection of all quotes, the Agency reserves the right to advertise for new quotes or to proceed to do the work otherwise, if in the judgment of the Agency, the best interest of the Agency will be promoted.
- 3.3.2 Prospective quoters acknowledge by downloading and receiving the QSP documents and/or by submitting a quote that the submission of a quote to the Agency is not a right by which to be awarded that quote, but merely an offer by the prospective quoter to perform the requirements of the QSP documents in the event the Agency decides to consider an award to that quoter.
- 3.4 Cancellation of Award. The Agency reserves the right to, without any liability, cancel the award of any quote(s) at any time before the execution of the contract documents by all parties.
- 3.5 Mistake in Quote Submitted.
- 3.5.1 A request for withdrawal of a quote due to a purported error need not be considered by the Agency unless the same is filed in writing by the quoter within 48 hours after the quote deadline (quoters may of their own volition withdraw a quote prior to the quote deadline). Any such request shall contain a full explanation of any purported error and shall, if requested by the Agency, be supported by the original calculations on which the quote was computed, together with a certification and notarization thereon that such computation is the original and prepared by the quoter or his/her agent, who must be identified on the notarized form. The foregoing shall not be construed that such withdrawal will be permitted, as the Agency retains the right to accept or reject any quote withdrawal for a mistake.



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- 3.5.2 Unless otherwise prohibited within the QSP documents, a mistake in the cost unit pricing that does not affect the total cost sum submitted may, at the Agency's discretion, be corrected by submitting a corrected cost form, together with a complete explanation in writing, of how the mistake occurred, to the CO, for his/her review. This mistake must be corrected before the issuance of contract documents.
- 3.6 **Irregular Quote Submittal.** A quote shall be considered irregular for any one of the following reasons, any one or more of which may, at the Agency 's discretion, be cause for rejection:
- 3.6.1 If the forms furnished by the Agency are not used or are altered or if the quote costs are not submitted as required and where provided (especially within the eProcurement Marketplace).
- 3.6.2 If all requested completed attachments do not accompany the quote submitted.
- 3.6.3 If there are unauthorized additions, conditional or alternate quotes, or irregularities of any kind which may tend to make the quote incomplete, indefinite or ambiguous as to its meaning or give the quoter submitting the same a competitive advantage over other quoters.
- 3.6.4 If the quoter adds any provisions reserving the right to accept or reject any award or to enter into a contract pursuant to an award.
- 3.6.5 If the individual Pricing Items submitted by a specific quoter are unbalanced in the sense that the listed price of any cost item departs by more than 25% from the Agency's cost estimate for that item.
- 3.7 **Disqualification of Quoters.** Any one or more of the following shall be considered as sufficient for the disqualification of a quoter and the rejection of his/her quote:
- 3.7.1 Evidence of collusion among prospective or actual quoters. Participants in such collusion will receive no recognition as quoters or quoters for any future work of the Agency until such participant shall have been reinstated as a qualified quoter or quoter. The names of all participants in such collusion shall be reported to HUD and any other inquiring governmental agency.
- 3.7.2 More than one quote for the same work from an individual, firm, or corporation under the same or different name(s), unless such was specifically allowed by the Agency within the quote documents issued, including by addendum.
- 3.7.3 Lack of competency, lack of experience and/or lack of adequate machinery, plant, and/or other resources.

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- 3.7.4 Documented unsatisfactory performance record as shown by past work for the Agency or with any other local, State, or Federal agency, judged from the standpoint of workmanship and progress.
- 3.7.5 Incomplete work, which in the judgment of the Agency, might hinder or prevent prompt completion of additional work, if awarded.
- 3.7.6 Failure to pay or satisfactorily settle all bills due on former contracts still outstanding at the time of letting.
- 3.7.7 Failure to comply with any qualification requirement of the Agency.
- 3.7.8 Failure to list, if required, all subcontractors (if subcontractors are allowed by the Agency) who will be employed by the successful quoter(s) to complete the work of the quote contract.
- 3.7.9 As required by the QSP documents, failure of the successful quoter to be properly licensed by the State of California and/or to be insured by a general liability and/or worker's compensation policy.
- 3.7.10 Any legal reason to be determined, in good faith, to be in the best interests of the Agency.

3.8 **Burden of Proof.** If requested by the Agency, it shall be the responsibility of the quoter(s) to furnish the Agency with sufficient data or physical samples, within a specified time, so that the Agency may determine if the goods or services offered conform to the Specifications.

4.0 **Right to Protest.**

4.1 **Rights.** Any prospective or actual quoter, offeror, or Contractor who is allegedly aggrieved in connection with the solicitation of a quote or award of a contract, shall have the right to protest. An alleged aggrieved protestant claiming this right is hereby informed that these regulations do not provide for administrative appeal as a matter of right for that alleged aggrieved protestant.

4.1.1 An alleged aggrieved "protestant" is a prospective or actual quoter who feels that he/she has been treated inequitably by the Agency and wishes the Agency to correct the alleged inequitable condition or situation. To be eligible to file a protest with the Agency pertaining to an QSP or contract, the alleged aggrieved protestant must have been involved in the QSP process in some manner as a prospective quoter (i.e. registered and received the QSP documents) when the alleged situation occurred. The Agency has no obligation to consider a protest filed by any party that does not meet these criteria.

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- 4.2 **Administrative Powers.** It is totally within the administrative powers of the ED to grant or deny any requests for administrative appeal. If, in the opinion of the ED, the alleged aggrieved protestant merits an administrative review, the ED shall direct that alleged aggrieved protestant to submit additional data.
- 4.3 **Procedure to Protest.** An alleged aggrieved protestant shall comply with the following protest procedures, and failure to comply in the manner prescribed shall automatically relieve the Agency from accepting or considering that protest:
- 4.3.1 The alleged aggrieved protestant must file, in writing, to the CO the exact reason for the protest, attaching any supportive data. The protestant must state within the written protest document specifically (not by inference) what action by the Agency or condition is being protested as inequitable, making, where appropriate specific reference to the QSP documents issued. The protest document must also state the corrective action requested. Failure by the alleged aggrieved protestant to fully submit such information shall relieve the Agency from any responsibility to consider the protest and take any corrective action.
- 4.3.2 The written instrument containing the reason for the protest must be received by the CO within 10 days after the occurrence of any of the following:
- 4.3.2.1 The deadline for receiving quotes;
- 4.3.2.2 Receipt of notification of the results of the evaluation or the award; or
- 4.3.2.3 The alleged aggrieved protestant knows or should have known the facts.
- 4.3.3 In any case, protests shall be filed no more than 10 days after any of the above (unless the occurrence being protested occurred in its entirety after the quote deadline). Protests received after these dates shall not be considered.
- 4.3.4 The CO shall review the written protest and supportive data, if any. He/she shall, within 10 days after receipt of the written protest, issue a written opinion and decision. This document shall state the reasons for the action taken as well as inform the alleged aggrieved protestant of the right of further administrative review. A copy of this written opinion and decision shall be forwarded to the ED.
- 4.3.5 **Administrative Appeal.** If the alleged aggrieved protestant does not agree with the written opinion and decision issued by the CO, the alleged aggrieved protestant may, after receipt of the written opinion and decision issued by the CO request an administrative appeal hearing be granted. The following procedures must be complied with in the manner

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prescribed; failure by the alleged aggrieved protestant to comply shall automatically relieve the Agency from accepting or acting on that request for administrative hearing:

- 4.3.5.1 The alleged aggrieved protestant must file, in writing, his/her request for an administrative hearing, to the ED, within 5 days of receipt of the written opinion and decision and failure to do so within such 5 days shall relieve the Agency of any responsibility to consider such request.
- 4.3.5.2 The request for an administrative appeal hearing must contain the specific reasons for the appeal and all supporting data for those reasons.
- 4.3.5.3 It shall be within the administrative powers of the ED to, after review of the request submitted, grant, or deny any request for administrative appeal.
- 4.3.5.4 If the ED, after complete review of the alleged aggrieved protestant's written request and supporting data, decides that the request does not merit further consideration, he/she shall render his/her decision in writing to the alleged aggrieved protestant. A decision rendered under this paragraph shall be made within 10 days after the receipt of the alleged aggrieved protestant's request for an administrative hearing. This decision shall be final without further administrative recourse.
- 4.3.5.5 If the ED, after review of the alleged aggrieved protestant's written request, decides that the request merits further consideration, he/she shall forward the protestant's written request, along with a cover letter explaining why it merits further consideration and with a recap of all quotes submitted and a copy of the original written protest, to the Agency Legal Counsel for consideration. The Agency Legal Counsel shall issue to the alleged aggrieved protestant a decision, in writing, within 10 days of his/her receipt of such documents.
- 4.3.5.5 Such written decision delivered to the alleged aggrieved protestant shall exhaust the Agency internal protest and administrative appeal process available to the alleged aggrieved protestant.

5.0 Disputed Billings (Charges).

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5.1 Procedures. In addition to the procedures detailed within Clause No. 3 of Contract Appendix No. E-1, form HUD-5370-EZ (1/2014), *General Conditions for Small Construction Contracts/Development*, attached hereto, in the event that the Agency disputes any portion of its billing(s), the Agency shall pay the undisputed portion of such billing and initiate the dispute-resolving procedures, as follows:

5.1.1 The Agency's representative shall, within 10 days after the Agency's receipt of such billing, formally notify the Contractor's representative of all particulars pertaining to the dispute, and request that he/she investigate and respond to this issue.

5.1.2 If such dispute cannot be resolved by the Contractor's response, within 10 days after such notification is given, the CO and the Contractor's representative shall meet to discuss the matter and attempt to arrive at a resolution.

5.1.3 If the CO and the Contractor's representative are unable to resolve the dispute through such discussion within 10 days, the Agency shall, within 10 days thereafter, either (hereinafter following, "appropriate," at the discretion of the Agency):

5.1.3.1 Pay the disputed charges and reserve the right to submit the matter to the appropriate District Court in the State of California;

5.1.3.2 Not pay the disputed charge and submit the matter to the appropriate district court in the State of California;

5.1.3.3 Not pay the disputed charge and allow the Contractor to submit the matter either to the appropriate District Court in the State of California.

6.0 Additional Considerations.

6.1 Right of Joinder.

6.1.1 Any political subdivision within the State of California may be granted the privilege of joining the awarded contract, only at the option of the successful quoter. If the successful quoter so grants such a privilege, the terms and conditions of the QSP documents, including the ensuing contract, may be passed on to the joining political subdivision by the successful quoter.

6.1.2 The successful quoter shall retain the unilateral right to allow or disallow any political subdivision the privilege of joining the awarded contract. In the event the successful quoter allows another political subdivision to join the Agency contract, it is expressly understood that the Agency shall in no

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way be liable for the joining political subdivision obligations to the successful quoter in any manner whatsoever.

- 6.2 **Non-Escalation.** Unless otherwise specified within the QSP documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.
- 6.3 **Funding Restrictions and Order Quantities.** The Agency reserves the right to reduce or increase estimated or actual quantities in whatever amount necessary without prejudice or liability to the Agency, if:
- 6.3.1 Funding is not available;
  - 6.3.2 Legal restrictions are placed upon the expenditure of monies for this category of service or supplies; or,
  - 6.3.3 The Agency's requirements in good faith change after award of the contract.
- 6.4 **Required Permits.** Unless otherwise stated in the QSP documents, all local, State or Federal permits which may be required to provide the services ensuing from award of this QSP, whether or not they are known to either the Agency or the quoters at the time of the quote submittal deadline or the award, shall be the sole responsibility of the successful quoter and any costs submitted by the quoter shall reflect all costs required by the successful quoter to procure and provide such necessary permits.
- 6.5 **Taxes.** All persons doing business with the Agency are hereby made aware that the Agency is exempt from paying California State Sales and Use Taxes and Federal Excise Taxes. A letter of Tax Exemption will be provided upon request.
- 6.6 **Government Standards.** It is the responsibility of the prospective quoter to ensure that all items and services quote conform to all local, State, and Federal laws concerning safety (OSHA and NIOSH) and environmental control (EPA and California DEP) and any other enacted ordinance, code, law, or regulation. The successful quoter shall be responsible for all costs incurred for compliance with any such possible ordinance, code, law, or regulation. No time extensions shall be granted, or financial consideration given, to the successful quoter for time or monies lost due to violations of any such ordinance, code, law, or regulations that may occur.
- 6.7 **Freight on Bill and Delivery.** All costs submitted by the successful quoter shall reflect the cost of delivering the bidded items and/or services to the location(s) specified within the QSP documents or within the contract.
- 6.7.1 The successful quoter agrees to deliver to the designated location(s) on or before the date as specified in the finalized contract. Failure to deliver on or before the specified date constitutes an event of default by the successful quoter. Upon default, the successful quoter agrees that the

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Agency may, at its option, rescind the finalized contract under the default clause herein and seek compensatory damages as provided by law.

- 6.8 **Communication.** If during the period of the contract, it is necessary that the Agency place toll or long-distance telephone calls or telegrams in connection therewith (for complaints, adjustments, shortages, failure to deliver, etc.), it is understood that the successful quoter will bear the charge or expense for all such calls and/or telegrams.
- 6.9 **Work on Agency Property.** If the successful quoter's work under the contract involves operations by the successful quoter on Agency premises, the successful quoter shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and, except to the extent that any such injury is caused solely and directly by the Agency's negligence, shall indemnify the Agency, and their officers, agents, servants and employees against all loss which may result in any way from any act or omission of the successful quoter, its agents, employees, or subcontractors.
- 6.10 **Estimated Quantities.** Unless otherwise indicated within the QSP documents, the quantities reflected within the QSP documents, to the best of the Agency's knowledge, reflect projected consumption data. These quantities are not meant to infer or imply actual consumption figures or quantities that will be purchased by the Agency under the finalized contract; but, pursuant to all QSP documents, these quantities will be used as calculation figures to determine the successful quoter.
- 6.11 **Warranty.**
- 6.11.1 The services provided under the contract shall conform to all information contained within the QSP documents as well as applicable Industry Published Technical Specifications, and if one of the above-mentioned Specifications contains more stringent requirements than the other, the more stringent requirements shall apply.
- 6.11.1 The liability of the successful quoter to the Agency (except as to title) arising out of the furnishing of the services or of its use under the terms of the contract shall not exceed the correcting of the defect(s) in the services as provided under the contract, and upon expiration of the warranty period all such liability shall terminate except under the warranty for merchantability and the warranty of fitness for a particular purpose.
- 6.12 **Official, Agent and Employees of the Agency not Personally Liable.** It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of the Agency in any way be personally liable or responsible for any covenant or agreement herein contained, whether either expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this agreement.

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- 6.13 **Subcontractors.** Unless otherwise stated within the QSP documents, the successful quoter may not use any subcontractors to accomplish any portion of the services described within the QSP documents or the contract without the prior written permission of the CO.
- 6.14 **Salaries and Expenses Relating to the Successful Quoters Employees.** Unless otherwise stated within the QSP documents, the successful quoter shall pay all salaries and expenses of, and all Federal, Social Security taxes, Federal and State Unemployment taxes, and any similar taxes relating to its employees used in the performance of the contract. The successful quoter further agrees to comply with all Federal, State, and local, wage and hour laws and all licensing laws applicable to its employees or other personnel furnished under this agreement.
- 6.15 **Attorney's Fees.** In the event that one party commences litigation hereto against the other in connection with the enforcement of any provision of this agreement, the prevailing party shall be paid by the losing party all court costs and other expenses of such litigation, including attorneys' fees, in a reasonable amount, to be determined by the court. The amount so allowed as attorneys' fees shall be taxed to the losing party as costs of the suit, unless prohibited by law.
- 6.16 **Independent Contractor.** Unless otherwise stated within the QSP documents or the contract, the successful quoter is an independent Contractor. Nothing herein shall create any association, agency, partnership, or joint venture between the parties hereto and neither shall have any authority to bind the other in any way.
- 6.17 **Severability.** If any provision of this agreement or any portion or provision hereof applicable to any particular situation or circumstance is held valid, the remainder of this agreement or the remainder of such provision (as the case may be), and the application thereof to other situations or circumstances shall not be affected thereby.
- 6.18 **Waiver of Breach.** A waiver of either party of any terms or condition of this agreement in any instance shall not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, obligation or agreement of either party.
- 6.19 **Time of the Essence.** Time is of the essence under this agreement as to each provision in which time of performance is a factor.
- 6.20 **Limitation of Liability.** In no event shall the Agency be liable to the successful quoter for any indirect, incidental, consequential, or exemplary damages.
- 6.21 **Indemnity.**



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- 6.21.1 The successful quoter shall protect, indemnify and hold the Agency, its officers, employees, agents, consulting engineers and other retained consultants harmless from and against any and all claims, damages, losses, suits, actions, decrees, judgments, attorney's fees, court costs and other expenses of any kind or character which the Agency, its officers, employees, agents, consulting engineers or other retained consultants may suffer, or which may be sought against, recovered from or obtainable against the Agency, its officers, employees, agents, consulting engineers or other retained consultants such as:
- 6.21.1.1 as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act on the part of the successful quoter, its subcontractors or agents, or anyone directly or indirectly employed by any subcontractor or agent, in the fulfillment or performance of the terms, conditions or covenants that are contained in this contract or agreement, regardless of whether or not the occurrence which gave rise to such claim, damage, loss, suit, action, judgment or expense was caused, in part, by any party indemnified hereunder; or
  - 6.21.1.2 as a result of, or by reason of, or arising out of, or on account of, or in consequence of, any neglect in safeguarding the work; or
  - 6.21.1.3 through the use of unacceptable materials or products, or both, which may be defective or manufactured, designed, or installed so as to give rise to a claim; or
  - 6.21.1.4 because of any claim or amount recovered under any law, ordinance, or decree, which claim or recovery arose out of or is attributable to any act or failure to act on the part of the successful quoter in the fulfillment or performance of the terms, conditions and covenants that are contained in this contract. Any money due by the successful quoter under and by virtue of this contract which is considered necessary by the Agency for such purpose, may be retained by the Agency for its protection; or in case no money is due, its surety may be held until all such claims, damages, losses, suits, actions, decrees, judgments, attorney's fees and court costs and other expenses of any kind or character as aforesaid shall have been settled and suitable evidence to that effect furnished to the Agency provided, however, that money due the successful quoter will not be withheld when the successful quoter produces satisfactory evidence that it is adequately protected by public liability and property damage insurance, if required.

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- 6.21.2 In this connection, it is expressly agreed that the successful quoter shall, at its own expense, defend the Agency, its officers, employees, agents, consulting engineers and other retained consultants, against any and all claims, suits or actions which may be brought against them, or any of them, as a result of, or by reason of, or arising out of, or on account of, or in consequence of any act or failure to act the consequences of which the successful quoter has indemnified the Agency, its officers, employees, agents, consulting engineers and other retained consultants against, and if the successful quoter shall fail to do so, the Agency shall have the right, but not the obligation, to defend the same and to charge all direct and incidental costs of such defense to the successful quoter including attorney's fees and court costs; provided, however, that if the forum in which such claim suit or action is heard determines that the occurrence that gave rise to the same was caused, in whole or in part, by any party who is indemnified hereunder, the Agency shall reimburse the successful quoter for all, or the indemnified party's proportionate share, as the case may be, of the costs of such defense.
- 6.21.2 Reimbursement to the successful quoter by the Agency, in whole or in part, for the costs of protecting traffic shall not serve to relieve the successful quoter of its responsibility as set forth in the QSP documents.
- 6.21.3 The successful quoter guarantees the payment of all just claims for materials, supplies and labor, and all other just claims against it or any subcontractor, in connection with the contract.
- 6.22 **Lobbying Certification.** By proposing to do business with the Agency or by doing business with the Agency, each quoter certifies the following:
- 6.22.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the quoter, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of an Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- 6.22.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the

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

6.22.3 The successful quoter shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

6.22.4 This clause is a material representation of fact upon which reliance was placed when the award was made or entered into. The signing of a contract or acceptance of award certifies compliance with this certification, which is a prerequisite for making or entering into a contract, which is imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certifications shall be subject to civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

6.23 **2 CFR §200.326, Appendix II, Contract Provisions For Non-Federal Entity Contracts Under Federal Awards.** Pursuant to this CFR, as issued by the Office of the U.S. Secretary of HUD, the Agency, and the Contractor each agree to comply with the following provisions and agree that any contract that ensues as a result of this RFP will include the following clauses, whether actually inserted or by reference:

6.23.1 **Remedies for Contractor Breach.** Pertaining to contract-related issues, it is the responsibility of both the Agency and the Contractor to communicate with each other in as clear and complete a manner as possible. If at any time during the term of this contract the Agency or the Contractor is not satisfied with any issue, it is the responsibility of that party to deliver to the other party communication, in writing, fully detailing the issue and corrective action (please note that the Agency has the right to issue unilateral addendums to this contract, but the Contractor does not have the same right). The other party shall, within 10 days, respond in writing to the other party (however, the Agency shall retain the right to, if conditions warrant, require the Contractor to respond in a shorter period of time). Further, the Agency shall, at a minimum, employ the following steps in dealing with the Contractor as to any performance issues:

6.23.1.1 If the Contractor is in material breach of the contract, the Agency may promptly invoke the termination clause detailed within Section No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, which form is attached hereto, and terminate the contract for cause. Such termination must be delivered to the Contractor in

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writing and shall fully detail all pertinent issues pertaining to the cause of and justification for the termination.

- 6.23.1.2 Prior to termination, the Agency may choose to warn the Contractor, verbally or in writing, of any issue of non-compliant or unsatisfactory performance. Such written warning may include placing the Contractor on probation, thereby giving the Contractor a certain period of time to correct the deficiencies or potentially suffer termination. The Agency shall maintain in the contract file a written record of any such warning detailing all pertinent information. If the Contractor does not agree with such action, the Contractor shall have 10 days to dispute or protest, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 6.23.1.3 After termination, if the Contractor does not agree with the Agency's justification for the termination, the Contractor shall have 10 days to dispute, in writing, such action; if he/she does not do so within the 10-day period, he/she shall have no recourse but to accept and agree with the Agency's position on the issue. The written protest must detail all pertinent information pertaining to the dispute, including justification detailing the Agency's alleged incorrect action(s).
- 6.23.1.4 The response to any protest received shall be conducted in accordance with Section No. 4.0 of this document.
- 6.23.2 **Termination for Cause and Convenience.** For all contracts in excess of \$10,000, as detailed within Clause No. 3 of Contract Appendix No. 1, form HUD-5370-C (01/2014), *General Conditions for Non-Construction Contracts, Section I—(With or without Maintenance Work)*, attached hereto.
- 6.23.3 **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part

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60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- 6.23.4 **Davis-Bacon Act, as amended (40 U.S.C.3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C.3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors [are] required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors [are] required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the **Copeland "Anti-Kickback" Act (40 U.S.C. 3145)**, as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 6.23.5 **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or *contracts for transportation or transmission of intelligence.*

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- 6.23.7 **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 6.23.8 **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended**—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 6.23.9 **Mandatory standards and policies relating to energy efficiency** which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- 6.23.10 **Debarment and Suspension (Executive Orders 12549 and 12689)**—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 6.23.11 **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**—Contractors that apply or quote for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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6.23.12 *§200.322 Procurement of recovered materials.* A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

6.24 **Additional Federally Required Orders/Directives.** Both parties agree that they will comply with the following laws and directives that the Agency has received from HUD and that these same clauses will be a part of any contract that ensues as a result of this QSP:

6.24.1 **Executive Order 11061**, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.

6.24.2 **Public Law 88-352, Title VI of the Civil Rights Act of 1964**, which provides that no person in the United States shall, on the basis of race, color, national origin, or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. The Agency hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).

6.24.3 **Public Law 90-284, Title VIII of the Civil Rights Act of 1968**, popularly known as the Fair Housing Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex, or national origin. Pursuant to this statute, the Agency requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.

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- 6.24.4 The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- 6.24.5 Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- 6.24.6 HUD Information Bulletin 909-23 which is the following:
  - 6.24.6.1 Notice of Assistance Regarding Patent and Copyright Infringement;
  - 6.24.6.2 Clean Air and Water Certification; and
  - 6.24.6.3 Energy Policy and Conversation Act.
- 6.24.7 The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable not is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.