



GOBIERNO DE PUERTO RICO  
DEPARTAMENTO DE LA VIVIENDA

COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY (CDBG-DR)

AGREEMENT FOR  
INCREASED CAPACITY- ENVIRONMENTAL SERVICES  
BETWEEN THE  
PUERTO RICO DEPARTMENT OF HOUSING  
AND  
BEHAR YBARRA & ASSOCIATES, LLC



**THIS AGREEMENT FOR INCREASED CAPACITY – ENVIRONMENTAL SERVICES**, (hereinafter referred to as the "Agreement") is entered into in San Juan, Puerto Rico, this 21 of April 2021, 2021, by and between the **PUERTO RICO DEPARTMENT OF HOUSING** (hereinafter, "PRDOH"), a public agency created under Law No. 97 of June 10, 1972, as amended, 3 L.P.R.A. § 441 et seq., known as the Department of Housing Governing Act with principal offices at 606 Barbosa Avenue, San Juan, Puerto Rico, herein represented by William O. Rodríguez Rodríguez, attorney, of legal age, single, and resident of San Juan, Puerto Rico, in his capacity as Secretary; and **BEHAR YBARRA & ASSOCIATES, LLC** (hereinafter, the "CONTRACTOR"), with principal offices in Perseo Street 554 Cond. Iberia I Suite J-3 Altamira, San Juan, PR 00920, herein represented by Miguel A. Pérez Correa, in his capacity as Member, of legal age, married, and resident of Canóvanas, PR duly authorized by Resolution by the CONTRACTOR.

**WHEREAS**, on September 2017, Hurricanes Irma and María made landfall in Puerto Rico causing catastrophic island wide damage, knocking out power, water, and telecommunications for the entire island and its island municipalities. Hurricane María caused major structure and infrastructure damage to family homes, businesses and government facilities triggering the displacement of thousands of residents of the Island from their homes and jobs.

**WHEREAS**, under the Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017, signed into law September 8, 2017 (Pub. L. 115-56), \$1.5 billion were allocated by the U.S. Department of Housing and Urban Development (HUD) for disaster recovery assistance to the Government of Puerto Rico under the CDBG-DR. These funds are intended to provide financial assistance to address unmet needs that arise and that are not covered by other sources of financial aid.

**WHEREAS**, on February 9, 2018, a Notice was published in the Federal Register, Vol. 83, No. 28 (83 FR 5844), that allocated \$1.5 billion for disaster recovery assistance to the Government of Puerto Rico.

**WHEREAS**, pursuant to a letter dated February 23, 2018 sent by the former Governor of Puerto Rico to the Secretary of HUD, the PRDOH is the governmental agency designated as grantee of the CDBG-DR funds allocated to the Government of Puerto Rico.

**WHEREAS**, under the Bipartisan Budget Act of 2018, signed into law February 9, 2018 (Pub. L. 115-123), an additional \$8.22 billion were allocated by HUD for disaster recovery assistance to the Government of Puerto Rico under CDBG-DR.

**WHEREAS**, on August 14, 2018, a Notice was published in the Federal Register Vol. 83, No. 157, (83 FR 40314) that made an additional allocation to Puerto Rico of \$8.22 billion for recovery. With these allocations of funding, the PRDOH aims to lead a transparent,

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comprehensive recovery to benefit the residents of Puerto Rico. PRDOH holds accountability and is committed to the responsible, efficient, and transparent administration of CDBG-DR grant funding.

**WHEREAS**, On September 20, 2018, the Governor of Puerto Rico and the Secretary of HUD signed the Grant Agreement.

**WHEREAS**, the PRDOH is interested in contracting an environmental consulting services firm to assist PRDOH with the capacity of the environmental services and respond to the increased demand of services needed to support the Home, Repair, Reconstruction, or Resolution Program (R3 Program). This firm will support PRDOH's objectives of ensuring compliance with all CDBG-DR, HUD and applicable federal and local requirements, rules and regulations, as well as in PRDOH's objectives of the Action Plan, as amended, and adequately coordinating and monitoring all CDBG-DR related activities.

**WHEREAS**, on July 17, 2020, the PRDOH issued the Request for Proposal No. CDBG-DR-RFP 2020-02 with CDBG-DR funds. This request was placed through the Registro Único de Subastas (RUS, by its Spanish Acronym) and the CDBG-DR website. Afterwards, PRDOH requested Quotations or Proposals from qualified Proposers therein registered. Through this procurement process, PRDOH was able to reach seven (7) qualified firms listed for their capacity and experience with federal grants to deliver qualified services.

**WHEREAS**, the CONTRACTOR submitted a proposal (hereinafter referred to as the "Proposal"), which fully complied with the requirements set forth by the PRDOH.

**WHEREAS**, Behar Ybarra & Associates, LLC was chosen to perform the required services at a reasonable proposed cost to assist PRDOH in Puerto Rico's recovery efforts according to the award criteria established in the RFP. **(Attachment A)**

**WHEREAS**, the PRDOH desires to enter into an agreement with **Behar Ybarra & Associates, LLC** to secure its services and accepts the CONTRACTOR's Proposal and costs, and the CONTRACTOR by its acceptance of the terms and conditions of this Agreement is ready, willing and able to provide the requested services contemplated under this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises and the terms and conditions set forth herein, the PRDOH and the CONTRACTOR agree as follows:

**I. TYPE OF CONTRACT**

**Contract Type:** This is a fixed fee and hourly contract. Under this Agreement, CONTRACTOR shall submit monthly invoices to the PRDOH based on the Cost Form **(Attachment D)** and as the services are rendered. Any and all changes and/or modifications to this Agreement shall be in writing and must be signed by both parties.

**Attachments Incorporated:** The following attachments are incorporated into this Agreement by reference and are hereby made part of this Agreement:

|                     |                                       |
|---------------------|---------------------------------------|
| <b>Attachment A</b> | Notice of Award                       |
| <b>Attachment B</b> | Proposal –Work Approach               |
| <b>Attachment C</b> | Scope of Services                     |
| <b>Attachment D</b> | Cost Form                             |
| <b>Attachment E</b> | Performance Requirements              |
| <b>Attachment F</b> | Insurance Requirements (DV-OSPA-78-5) |
| <b>Attachment G</b> | HUD General Provisions                |

**Attachment H**                      Contractor Certification Requirement

All Attachments hereto are fully incorporated herewith such that the terms and conditions of the Attachments shall be as binding as any terms and conditions of this executed written Agreement. Should any inconsistency appear between the Attachments and this Agreement, the Agreement shall prevail.

**II. TERM OF AGREEMENT**

- A.** This Agreement shall be in effect and enforceable between the parties from the date of its execution. The Term of this Agreement will be for a performance period of **thirty six (36) months**, ending on April, 20  , 20<sup>24</sup>.
- B. Contract Extensions:** PRDOH may, at its sole discretion, extend the Agreement's term for two optional extensions of **twelve (12) months**, or expressed in days, **three hundred and sixty-five (365) days** upon mutual written agreement of the parties.
- C.** The term of this Agreement shall not exceed the lifetime of the initial Grant Agreement between PRDOH and HUD, unless the term of the initial Grant Agreement is extended by HUD, in which case the Agreement shall not exceed said extended period.

**III. SCOPE OF SERVICES**

The CONTRACTOR will provide the services described in **Attachment C** of the Agreement. The parties agree that the CONTRACTOR shall furnish all permits, consents, licenses, equipment, software and supplies necessary to perform the Services, at CONTRACTOR's sole cost.

**IV. COMPENSATION AND PAYMENT**

- A.** The PRDOH agrees to pay the CONTRACTOR for allowable Services rendered under this Agreement in accordance with the rates and amounts described in **Attachment D** of this Agreement.
- B.** The PRDOH will pay the CONTRACTOR, for allowable services performed during the term of this Agreement, a maximum amount not to exceed **FIVE MILLION FOUR HUNDRED TWELVE THOUSAND NINE HUNDRED AND THIRTY EIGHT DOLLARS (\$5,412,938.00)**; Account Number R01H07RRR-DOH-LM 4190-10-000.
- C.** Such payment shall be compensation for all allowable services required, performed and accepted under this Agreement included in **Attachment D** and **Attachment E**.
- D.** Any additional funds to complete the services requested by the PRDOH to the CONTRACTOR will be subject to evaluation before acceptance as well as funds availability and will require an amendment to this Agreement.
- E.** The CONTRACTOR shall submit an invoice to PRDOH on a monthly basis. Said invoice must be submitted including all required invoice supporting documents, including but not limited to monthly reports, timesheets, invoice and photos evidence, expense plan and/or work projections. If PRDOH determines that the

submitted invoice and supporting documents are acceptable, then the invoice will be approved for payment.

- F.** An authorized representative of the PRDOH will review each invoice and, if adequate, will approve and process its payment. Payments to the CONTRACTOR shall be made by electronic funds transfer (EFT). PRDOH reserves the right to conduct any audits it deems necessary. The CONTRACTOR agrees to cooperate fully with any such audit or audits.
- G.** While providing the services under this Agreement, the CONTRACTOR must adhere to applicable requirements of the CDBG-DR grant. If the CONTRACTOR performs ineligible activities under the CDBG-DR grant or program, the CONTRACTOR cannot include them in the invoice for payment to the CONTRACTOR.
- H.** CONTRACTOR shall be liable to the PRDOH for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Agreement. CONTRACTOR shall reimburse such disallowed costs from funds other than those CONTRACTOR received under this Agreement.
- I.** The CONTRACTOR acknowledges and agrees to repay any CDBG-DR funds used for ineligible costs.
- J.** Extended overhead costs is an Ineligible cost under this Agreement and shall not be reimbursable.
- K.** In order for the CONTRACTOR to receive payment for any work performed hereunder, the following certification must be included in each application for payment or invoice submitted to the PRDOH for payment:

**“Under penalty of absolute nullity, I hereby certify that no public servant of the government entity is a party to or has an interest of any kind in the profits or benefits to be obtained under the contract which is the basis of this invoice, and should he be a party to, or have an interest in, the profits or benefits to be obtained under the contract, a waiver has been previously issued. The only consideration to provide the contracted goods or services under the contract is the payment agreed upon with the authorized representative of the government entity. The amount that appears in the invoice is fair and correct. The work has been performed, the goods have been delivered, and the services have been rendered, and no payment has been received therefor.”**

#### **V. REIMBURSABLE EXPENSES**

The PRDOH will not reimburse any costs incurred by the CONTRACTOR not included in the approved Proposal or in an executed written amendment.

#### **VI. ADDITIONAL SERVICES**

Should additional services be needed by the PRDOH, such additional services shall be agreed upon by the parties in a written document signed by both parties, prior to the issuance of a notice to proceed with the performance of such additional services.

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## VII. OWNERSHIP AND USE OF DOCUMENTS

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- A. With the exception of the CONTRACTOR's working papers, the CONTRACTOR acknowledges the PRDOH's ownership of all information, drafts, documents, reports, papers, and other materials developed and prepared by the CONTRACTOR, its agents or representatives, for purposes of performing key obligations hereunder. In the event of any termination, the CONTRACTOR shall deliver such information, drafts, reports, papers and other materials to the PRDOH, in document form or as computer program data, and the CONTRACTOR recognizes the PRDOH's right to request such documentation or computer program data. If the CONTRACTOR fails to deliver said information, the PRDOH may seek a judicial order to enforce its rights.
- B. Proof of expenditures incurred by the CONTRACTOR on behalf of PRDOH shall be made available to PRDOH. The CONTRACTOR agrees to maintain accurate records and files of all contract documents, correspondence, book estimates, bills, and other information related to the CONTRACTOR account. These documents shall be open for the PRDOH examination at all reasonable times during the term of this Agreement, and up to **five (5) years** from closeout of the grant to the state, or the period required by other local applicable laws and regulations.

## VIII. DOCUMENTATION AND RECORDKEEPING

- A. **Records to be Maintained:** The CONTRACTOR shall maintain records of the state and units of general local government, including supporting documentation, which shall be retained for the greater of **five (5) years** from closeout of the grant to the state, or the period required by other local applicable laws and regulations. Such records include but are not limited to: Records providing a full description of each activity undertaken; Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG-DR program; Records required to determine the eligibility of activities; Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG-DR assistance; Records documenting compliance with the fair housing and equal opportunity requirements of the CDBG-DR program regulations; Financial records as required by 24 C.F.R. § 570.502, and 2 C.F.R. part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and other records necessary to document compliance with this agreement, any other applicable Federal statutes and regulations, and the terms and conditions of PRDOH's Federal award.
- B. **Access to Records:** The CONTRACTOR shall permit the PRDOH and auditors to have access to the CONTRACTOR's records and financial statements as necessary for the PRDOH to meet its audit requirements under the Federal award.
- C. **Record Retention and Transmission of Records to the PRDOH:** Prior to close out of this Agreement, the CONTRACTOR must transmit to the PRDOH records sufficient for the PRDOH to demonstrate that all costs under this Agreement met the requirements of the Federal award.
- D. **CONTRACTOR's Data and Privileged Information:** The CONTRACTOR is required to maintain confidential data demonstrating client eligibility for activities provided under this Agreement. Such data may include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of activities provided.

- E. PII Policy:** The CONTRACTOR must comply with the PRDOH CDBG-DR Personal Identifiable Information Policy, as found in the CDBG-DR Website ([www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov)), which is herein included and made integral part of this Agreement, as it may be updated from time to time.

#### **IX. ACCESS TO RECORDS**

- A.** The CONTRACTOR agrees to provide the Government of Puerto Rico, PRDOH, HUD's Secretary, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this Agreement 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.

#### **X. NON-DISCLOSURE AND CONFIDENTIALITY**

- A. Confidential Information; Definition:** The term Confidential Information as used throughout this Section, means any information concerning PRDOH operations and that of its CONTRACTOR (e.g., the projects, computer processing systems, object and source codes and other PRDOH business and financial affairs). The term Confidential Information shall also deem to include all notes, analysis, compilation, studies and interpretation or other documents prepared by CONTRACTOR, its agents or representatives, in connection with PRDOH operations.
- B. Non-Disclosure:** CONTRACTOR agrees to take all reasonable steps or measures to keep confidential all Confidential Information and will not, at any time, present or future, without PRDOH express written authorization, signed by the Secretary of the PRDOH, use or sell, market or disclose any Confidential Information to any third party, contractor, corporation, or association for any purpose whatsoever. CONTRACTOR further agrees that, except as they relate to the normal course of the service, the CONTRACTOR will not make copies of the Confidential Information except upon PRDOH express written authorization, signed by an authorized representative of PRDOH, and will not remove any copy or sample of Confidential Information without prior written authorization from PRDOH. CONTRACTOR retains the right to control its work papers subject to these confidentiality provisions.
- C. Return Documents:** Upon receipt of written request from the PRDOH, CONTRACTOR will return to PRDOH all copies or samples of Confidential Information which, at the time of the notice are in CONTRACTOR's or its agent's possession. CONTRACTOR reserves the right to retain a set of its work papers.
- D. Equitable Relief:** The CONTRACTOR acknowledges and agrees that a breach of the provision of subparagraph B and C of this Section will cause PRDOH to suffer irreparable damage that could not be remedied or compensated adequately only by mere monetary retribution. The CONTRACTOR further agrees that money damages may not be a sufficient remedy for any breach of this Section. Accordingly, the CONTRACTOR agrees that PRDOH shall have the right to seek injunctive relief and the specific performance of the provisions of this Section to enjoin a breach or attempted breach of the provision hereof, such right being in addition to any and all other rights and remedies that are available to PRDOH by law, equity, or otherwise.

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## XI. PERFORMANCE WARRANTY

- (a) CONTRACTOR warrants that it will perform all work and provide all Deliverables under this Contract in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
- (b) CONTRACTOR warrants that all Deliverables it completes under this Contract shall: meet or exceed the standards of CONTRACTOR's trade, profession, or industry; meet or exceed the specifications set forth in the Attachments to this Agreement; and be fit for ordinary use, of good quality, and with no material defects.
- (c) If CONTRACTOR submits Deliverables that do not meet specifications, fails to complete Deliverables timely, or fails to perform its obligation under this Contract, PRDOH may require CONTRACTOR, at its sole expense, to:
1. repair or replace Deliverables that do not meet specifications;
  2. refund payment for Deliverables that do not meet specifications and accept the return of such Deliverables;
  3. pay liquidated damages for any past due Deliverable; and
  4. take necessary action to ensure that future performance and Deliverables meet specifications and conform to the Contract.

## XII. TERMINATION

- A. Termination for Cause or Default:** The PRDOH may terminate this Agreement, in whole or in part, because of CONTRACTOR's failure to fulfill any of its obligations. The PRDOH shall terminate this Agreement by delivering to the CONTRACTOR a **thirty (30) day** notice of termination specifying the extent to which the performance of the service under this Agreement is terminated, the reason therefor and the effective date of termination. CONTRACTOR shall, upon written notice, be provided a **ten (10) day** opportunity to cure the alleged defect that resulted in the perceived default. If the defect is not cured within that period of time, CONTRACTOR shall immediately discontinue all such services being terminated and deliver to the PRDOH all information, notes, drafts, documents, analysis, reports, compilations, studies and other materials accumulated or generated in performing the services contemplated in this Agreement, whether completed or in process. Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the PRDOH for damage sustained to PRDOH CDBG-DR Program by virtue of any breach of the Agreement by the CONTRACTOR. The PRDOH may withhold any payments to the CONTRACTOR, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the PRDOH by the CONTRACTOR. PRDOH shall make payment, in accordance with the terms of this Agreement, of any amounts due to CONTRACTOR for allowable services rendered prior to the termination notice.
- B. Termination for Convenience:** The PRDOH may terminate this Agreement, in whole or in part, whenever the PRDOH determines that such termination is necessary or convenient to the Agency. The PRDOH will terminate this Agreement by delivering to the CONTRACTOR a **thirty (30) day** notice of termination specifying the extent to which the performance of the work under this Agreement is terminated, and the effective date of termination. Upon receipt of such notice, the CONTRACTOR shall immediately discontinue all services affected and deliver to the PRDOH all information, studies and other materials property of the PRDOH. In the event of a termination by Notice, the PRDOH shall be liable only for payment of services rendered up to and including the effective date of termination. PRDOH shall make payment, in accordance with the terms of this Agreement, of any amounts due to CONTRACTOR for allowable services rendered prior to the termination notice.

- C. Termination by Unilateral Abandonment:** The PRDOH will consider this Agreement immediately terminated, in the event that the CONTRACTOR unilaterally and without prior notice, chooses to abandon (in any shape, form or fashion) cease and desist in the specific performance of its general and particular duties and responsibilities as agreed in this Agreement. Upon the knowledge of such event, the PRDOH will not be held liable and will immediately, automatically and retroactively deduct from any future reimbursement, all funds from the day such unilateral abandonment took place. The PRDOH will not be compelled to continue the performance of the Agreement, should the CONTRACTOR breach the Agreement by unilateral abandonment. For the purposes of this Section, Abandonment shall mean that CONTRACTOR voluntarily and intentionally disavows its contractual duties in a manner that is overt and without question a relinquishment of said contractual duties.
- D. Unilateral Termination:** The PRDOH may terminate this Agreement, in whole or in part, at PRDOH's sole discretion, with or without cause, at any time. The PRDOH will terminate this Agreement by delivering to the CONTRACTOR a **thirty (30) day** notice of termination specifying the extent to which the performance of the work under this Agreement is terminated, and the effective date of termination. Upon receipt of such notice, the CONTRACTOR shall immediately discontinue all services affected and deliver to the PRDOH all information, studies and other materials property of the PRDOH. In the event of a termination by Notice, the PRDOH shall be liable only for payment of services rendered up to and including the effective date of termination.
- E. Suspension:** The PRDOH may suspend this Agreement in whole or in part at any time for the PRDOH's convenience. The PRDOH shall give the CONTRACTOR **five (5) days'** written notice of such suspension. Upon receipt of said notice the CONTRACTOR shall immediately discontinue all Services affected.
- F. Immediate Termination:** In the event the CONTRACTOR is subjected to a criminal or civil action, suit, proceeding, inquiry or court of applicable jurisdiction, or any governmental agency, or the CONTRACTOR shall be subject to an order, judgment, or opinion, issued by any federal or local authority, a court of applicable jurisdiction, or any governmental agency, in connection with the execution, delivery, and performance by the CONTRACTOR of this Agreement or the CONTRACTOR of this Agreement has been noncompliant, breach, inaccuracy of any representation, warranties, covenants, or the certifications provided herein, whether the noncompliance, breach or inaccuracy takes place before or after the execution of this Agreement, the PRDOH shall have the right to the immediate termination of this Agreement notwithstanding, any provisions to the contrary herein. This Section will apply in the event of any judgment that may obligate the PRDOH to terminate the Agreement pursuant to Act Number 2 of January 2, 2018, as amended, known as the Anti-Corruption Code for the New Puerto Rico.
- G. Period of Transition:** Upon termination of this Agreement, and for **ninety (90) consecutive calendar days** thereafter (the Transition Period), CONTRACTOR agrees to make himself available to assist the PRDOH with the transition of services assigned to CONTRACTOR by the PRDOH. CONTRACTOR shall provide to the PRDOH the assistance reasonably requested to facilitate the orderly transfer of responsibility for performance of the Services to the PRDOH or a third party designated by the PRDOH. PRDOH reserves the right to provide for the execution of a Transition Services Agreement for the Transition Period. In such instance, the CONTRACTOR will be paid at a reasonable, agreed upon, hourly rate for any work performed for the PRDOH during the Transition Period. Moreover, during that Transition Period, all finished or



unfinished records (files, data, work product) connected with this Agreement will be turned over to PRDOH.

### **XIII. PENALTIES AND LIQUIDATED DAMAGES**

#### **A. Penalties**

1. In the event the CONTRACTOR is determined to have engaged in any proscribed conduct or otherwise is in default as to any applicable term, condition, or requirement of this Agreement, at any time following the Effective Date of the Agreement, the CONTRACTOR agrees that, PRDOH may impose sanctions against the CONTRACTOR for any default in accordance with **Attachment C** and **Attachment E** and this Section. Refer to all required provisions set forth at 2 C.F.R. § 200.326 and 24 C.F.R. § 570.489(g), and the CDBG-DR Procurement Manual and Contract Requirements, Art. XII, Section 2(a.), as found in the CDBG-DR Website ([www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov)) which is herein included and made integral part of this Agreement, as it may be updated from time to time.
2. If the CONTRACTOR fails to comply with federal statutes, regulations or the terms and conditions of the Agreement, PRDOH may take one or more of the following actions:
  - i. Temporarily withhold cash payments pending correction of the deficiency by the CONTRACTOR.
  - ii. Disallow all or part of the cost of the activity or action not in compliance.
  - iii. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. part 180.
  - iv. Withhold further Federal awards for the project or program.
  - v. Take other remedies that may be legally available.

#### **B. Liquidated damages**

The CONTRACTOR shall pay to PRDOH, as liquidated damages, \$100.00 for each calendar day that any task deliverable required is late until deemed in compliance subject to a maximum of \$1,000.00 established in this Contract between PRDOH and the CONTRACTOR, in accordance with **Attachments C**. Said sum, in view of the difficulty of accurately ascertaining the loss which PRDOH will suffer by reason of delay in the completion of the Work hereunder, is hereby fixed and agreed as the liquidated damages that PRDOH will suffer by reason of such delay. Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the PRDOH's right to indemnification, or the CONTRACTOR's obligation to indemnify the PRDOH pursuant to this Contract, or to any other remedy provided for in this Contract or by Law. Liquidated damages may be assessed at the sole discretion of PRDOH. For the purpose of applying and calculating such liquidated damages, a grace period of **ten (10) days** shall be observed. The PRDOH may deduct and retain out of the monies which may become due hereunder, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages due to the PRDOH per the formula above, the CONTRACTOR shall be liable to pay the difference.

#### XIV. LIABILITY

In no event, the PRDOH shall be liable for any indirect, incidental, special or consequential damages, or damages for loss of profits, revenue, data or use, incurred by either party or any third party, whether in an action in contract or tort, even if the other party or any person has been advised of the possibility of such damages. Third parties operating under this program, with their agency, will have their own general civil and criminal liability imposed by law towards the PRDOH, the CONTRACTOR and any citizen.

The CONTRACTOR shall carry the insurances as are required by law (if applicable), as set forth below. The CONTRACTOR shall furnish PRDOH certificates of insurance.

#### XV. INSURANCE

##### A. Required Coverage

The CONTRACTOR shall keep in force and effect for the period beginning from the execution of the Agreement and ending at the completion of all services to be provided hereunder, insurance policies in compliance with the PRDOH's requirements as set forth in OSPA-78-5, attached hereto and made an integral part hereof as **Attachment F**.

Upon the execution of this Agreement, the CONTRACTOR shall furnish PRDOH with original and two (2) certified copies of the insurance policies described in **Attachment F** and any other evidence PRDOH may request as to the policies' full force and effect.

Any deductible amount, under any of the policies, will be assumed in whole by the CONTRACTOR for any and all losses, claims, expenses, suits, damages, costs, demands or liabilities, joint and several of whatever kind and nature arising from the Agreement resulting from this solicitation by and between the CONTRACTOR and PRDOH.

The PRDOH shall not be held responsible under any circumstances for payments of any nature regarding deductibles of any Commercial Liability Policies for the aforementioned Agreement.

##### B. Endorsements

Each insurance policy maintained by the CONTRACTOR must be endorsed as follows:

1. PRDOH, Government of Puerto Rico, HUD and its officers, agents and employees are named as additional insured (except Worker's Compensation) but only with respect to liability arising out of tasks performed for such insured by or on behalf of the named insured.
2. To provide waiver of subrogation coverage for all insurance policies provided or herein in favor of PRDOH and its respective officers, agents and employees.
3. The insurer shall be required to give PRDOH written notice at least **thirty (30) days** in advance of any cancellation in any such policies.

The CONTRACTOR shall furnish to PRDOH, prior to commencement of the work, certificates of insurance from insurers with a rating by the A.M. Best Co. of B+ and five (5) or over on all policies, reflecting policies in force, and shall also provide certificates evidencing all renewals of such policies. Insurers shall retain an A.M. Best Co. rating of B+

and five (5) or over on all policies throughout the term of this Agreement and all policy periods required herein. The insurance company must be authorized to do business in Puerto Rico and be in good standing.

### C. Related Requirements

The CONTRACTOR shall furnish original Certificates of Insurance evidencing the required coverage to be in force on the Effective Date of Agreement. In the case of Payment and Performance Bond, Certificate of Authority, Power of Attorney and Power of Attorney License issued by the Commissioner of Insurance shall be furnished. THE REQUIRED DOCUMENTATION MUST BE RECEIVED PRIOR TO THE CONTRATOR COMMENCING WORK. NO CONTRACTOR OR ITS AUTHORIZED REPRESENTATIVES ARE TO BEGIN THEIR RESPONSIBILITIES UNDER THE AGREEMENT PRIOR TO FULL COMPLIANCE WITH THIS REQUIREMENT AND NOTIFICATION FROM PRDOH TO PROCEED.

Renewal Certificates of Insurance or such similar evidence is to be received by the Contract Administration of the Legal Division and/or the Finance area of the CDBG-DR program prior to expiration of insurance coverage. At PRDOH's option, non-compliance will result in one or more of the following actions: (1) The PRDOH will purchase insurance on behalf of the CONTRACTOR and will charge back all cost to the CONTRACTOR; (2) all payments due the CONTRACTOR will be held until the CONTRACTOR has complied with the Agreement; and/or (3) The CONTRACTOR will be assessed **Five Thousand Dollars (\$5,000.00) for every day of non-compliance.**

The receipt of any certificate does not constitute agreement by PRDOH that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of the Agreement. The insurance policies shall provide for **thirty (30) days** written notice to be given to PRDOH in the event coverage is substantially changed, cancelled or non-renewed.

The CONTRACTOR shall require all subcontractors or consultants to carry the insurance required herein or the CONTRACTOR, may provide the coverage for any or all of its subcontractors and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined above.

The CONTRACTOR expressly understands and agrees that whenever the CONTRACTOR is covered by other primary, excess, or excess contingent insurance that, any insurance or self-insurance program maintained by PRDOH shall apply in excess of and will not contribute with insurance provided by the CONTRACTOR under this Agreement.

### XVI. HOLD HARMLESS

The CONTRACTOR and its affiliates, its successors and assignees will indemnify the PRDOH from any damages and/or losses arising out of any breach of this Agreement by the CONTRACTOR or against personal injuries or property damage resulting from any act of negligence or omission by the CONTRACTOR and its affiliates in connection with this Agreement.

### XVII. FORCE MAJEURE

In the event of a fire, flood, earthquake, natural disaster, hurricane, riot, act of governmental authority in its sovereign capacity, pandemic officially declared by the Government of Puerto Rico, strike, labor dispute or unrest, embargo, war, insurrection or

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civil unrest, any *Force Majeure* including inclement weather, herein collectively referred to as *Force Majeure* during the term of this Agreement, neither the PRDOH nor the CONTRACTOR shall be liable to the other party for nonperformance during the conditions created by such event.

The CONTRACTOR shall notify, as soon as possible, the PRDOH of the occurrence of the *Force Majeure* event and describe in reasonable detail, the nature of the *Force Majeure* event.

#### **XVIII. CONFLICTS OF INTEREST**

The CONTRACTOR shall comply with the ethics requirements set forth herein and warrant that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of the work under a PRDOH contract and CONTRACTOR'S organizational, financial, contractual or other interest are such that:

- a) Award of the Agreement may result in an unfair competitive advantage; or
- b) The CONTRACTOR's objectivity in performing the contract work may be impaired.

The CONTRACTOR agrees that if after award he or she discovers an organizational conflict of interest with respect to this Agreement, it shall make an immediate (within the next **seventy-two (72) hours**) and full disclosure in writing to the Contracting Officer, which shall include a description of the action, which the CONTRACTOR has taken or intends to take to eliminate or neutralize the conflict. The CONTRACTOR will disclose the details of any existing or future contract to provide services to third parties participating or for the purpose to participate in disaster recovery programs or projects in Puerto Rico. The PRDOH may, however, terminate the Agreement for the convenience of PRDOH if it would be in its best interest.

In the event the CONTRACTOR was aware of an organizational conflict of interest before the award of this Agreement and did not disclose the conflict to the Contracting Officer, the PRDOH may terminate the Agreement for default.

The provisions of this clause shall be included in all subcontracts and/or consulting agreements wherein the work to be performed is similar to the services provided by the CONTRACTOR. The CONTRACTOR shall include in such subcontracts and consulting agreements any necessary provision to eliminate or neutralize conflicts of interest.

#### **XIX. INDEPENDENT CONTRACTOR**

The relationship of the CONTRACTOR to PRDOH shall be that of an independent CONTRACTOR rendering professional services. Neither the CONTRACTOR nor any personnel of the CONTRACTOR shall have any authority to execute contracts or make commitments on behalf of PRDOH. Nothing contained herein shall be deemed to create the relationship of employer/employee, principal/agent, joint venture or partner between the CONTRACTOR and PRDOH. Further, the CONTRACTOR recognizes that in view of its status as an independent CONTRACTOR, neither it nor its employees or subcontractors will be entitled to participate in or receive any fringe benefits normally granted to PRDOH employees under such programs, including, but not limited to, worker's compensation, voluntary disability, travel accident insurance, medical/dental insurance, life insurance, long-term disability, holiday pay, sick pay, salary continuation pay, leaves of absence (paid or unpaid), pension plan and savings plan.

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The CONTRACTOR shall have exclusive control over its employees and subcontractors (and the CONTRACTOR's employees and subcontractors are herein, collectively, referred to as the "CONTRACTOR Personnel"), its labor and employee relations and its policies relating to wages, hours, working conditions and other employment conditions. The CONTRACTOR has the exclusive right to hire, transfer, suspend, lay off, recall, promote, discipline, discharge and adjust grievances with its CONTRACTOR Personnel. The CONTRACTOR is solely responsible for all salaries and other compensation of its CONTRACTOR Personnel who provide Services.

The CONTRACTOR is solely responsible for making all deductions and withholdings from its employees' salaries and other compensation and paying all contributions, taxes and assessments, including union payments. The CONTRACTOR shall be responsible for and shall defend, indemnify and hold harmless PRDOH, and its agents, officers, directors, employees, representatives, CONTRACTOR's, successors and assigns against all costs, expenses and liabilities, including without limitation reasonably prudent attorneys' fees relative to the situation, in connection with the CONTRACTOR's employment and/or hiring of any CONTRACTOR Personnel providing any of the Services, including without limitation: (i) payment when due of wages and benefits, (ii) withholding of all payroll taxes, including but not limited to, unemployment insurance, workers' compensation, FICA and FUTA, (iii) compliance with the Immigration Reform Control Act, and (iv) compliance with any other applicable laws relating to employment of any CONTRACTOR Personnel of, and/or hiring by, CONTRACTOR in connection with the Services.

**XX. NOTICES**

All notices required or permitted to be given under the Agreement shall be in writing, and shall be deemed given when delivered by hand or sent by registered or certified mail, return receipt requested, to the address as follows:

|           |  |
|-----------|--|
| To: PRDOH | William O. Rodríguez Rodríguez, Esq.<br>Secretary<br>Puerto Rico Department of Housing<br>606 Barbosa Ave.<br>Juan C. Cordero Dávila Bldg.<br>San Juan, PR 00918 |
|-----------|--|

|                |  |
|----------------|--|
| To: CONTRACTOR | Miguel A. Pérez Correa<br>Member<br>Behar Ybarra & Associates, LLC<br>Perseo Street 554 Cond. Iberia I Suite<br>J-3 Altamira<br>San Juan, PR 00920 |
|----------------|--|

**XXI. THIRD PARTIES**

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action of a third party against either the PRDOH or the CONTRACTOR.

**XXII. SUBCONTRACTS**

**A. General:** All subcontracts shall contain the applicable provisions described in **Attachment G** (HUD General Provisions), as well as applicable provisions set forth in 2

C.F.R. § 200.101. The PRDOH shall review subcontracts as part of the compliance, monitoring, and oversight process performed by PRDOH or upon request.

**B. Specific Requirements:** All subcontracts shall contain provisions specifying:

- i. That the work performed by the subcontractor be in accordance with the applicable terms of this Agreement between the PRDOH and CONTRACTOR;
- ii. That nothing contained in such subcontract agreement shall impair the rights of the PRDOH;
- iii. That nothing contained herein, or under this Agreement will create any contractual relation between the subcontractor and the PRDOH;
- iv. That the subcontractor specifically agrees to be bound by the confidentiality provision regarding Personal Identifiable Information set forth in this Agreement;
- v. That CONTRACTOR will be responsible for ensuring all subcontract work is performed consistent with federal and state regulations and/or policies to be eligible for reimbursement of the approved work; and
- vi. All Federal flow down provisions are included in the subcontract agreement per Federal guidelines.

**C. Monitoring:** CONTRACTOR shall diligently monitor all subcontracted services. If CONTRACTOR discovers any areas of noncompliance, CONTRACTOR shall provide the PRDOH summarized written reports supported with documented evidence of corrective action.

**D. Content:** CONTRACTOR shall cause all the applicable provisions of this Agreement to be included in, and made a part of, any subcontract executed in the performance of this Agreement.

**E. Notification:** CONTRACTOR shall notify and provide a copy of any and all subcontracts related to this Agreement and CDBG-DR funds to the Contract Administration Area of the PRDOH CDBG-DR Legal Division within **three (3) days** of its execution.

### **XXIII. CERTIFICATION OF COMPLIANCE WITH LEGAL REQUIREMENTS**

Given that the Agreement involves funds for which HUD is the oversight agency, the CONTRACTOR agrees to carry out its obligations under this Agreement in compliance with all the requirements described in **Attachment G** (HUD General Provisions), **Attachment H** (Contractor Certification Requirement) and the following provisions:

**A. Compliance with Executive Order 24:** Pursuant to Executive Order 24 of June 18, 1991, the CONTRACTOR certifies and guarantees that at the signing of this Agreement it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last **five (5) years**. The CONTRACTOR further certifies that it has complied and is current with the payment of any and all income taxes that are, or were due, to the Government of Puerto Rico. The CONTRACTOR shall hand out, to the satisfaction of the PRDOH and whenever requested by the PRDOH during the term of this Agreement, the necessary documentation to support its compliance of this clause. The CONTRACTOR will be given a specific amount of time by the PRDOH to produce said documents. During the term of this Agreement, the CONTRACTOR agrees to pay and/or to remain current with any repayment plan agreed to by the CONTRACTOR with the Government of Puerto Rico.

- B. Compliance with Executive Order 52:** Pursuant to Executive Order 52 of August 28, 1992, amending EO-1991-24, the CONTRACTOR certifies and warrants that it has made all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. The CONTRACTOR accepts and acknowledges its responsibility for requiring and obtaining a similar warranty and certification from each and every CONTRACTOR and subcontractor whose service the CONTRACTOR has secured in connection with the services to be rendered under this Agreement and shall forward evidence to PRDOH as to its compliance with this requirement.
- C. Social Security and Income Tax Retentions:** The CONTRACTOR will be responsible for rendering and paying the Federal Social Security and Income Tax Contributions for any amount owed as a result of the income from this Agreement.
- D. Government of Puerto Rico Municipal Tax Collection Center (CRIM, for its Spanish acronym):** The CONTRACTOR certifies and guarantees that at the signing of this Agreement it has no current debt with regards to property taxes that may be registered with the Government of Puerto Rico's Municipal Tax Collection Center. The CONTRACTOR further certifies to be current with the payment of any and all property taxes that are or were due to the Government of Puerto Rico. The CONTRACTOR shall hand out, to the satisfaction of the PRDOH and whenever requested by the PRDOH during the term of this Agreement, the necessary documentation to support its compliance of this clause. The CONTRACTOR will deliver upon request any documentation requested under this clause as per request of PRDOH. During the Term of this Agreement, the CONTRACTOR agrees to pay and/or to remain current with any repayment plan agreed to by the CONTRACTOR with the Government of Puerto Rico with regards to its property taxes.
- E. Income Tax Withholding:** The PRDOH shall retain the corresponding amount from all payments made to the CONTRACTOR, as required by the Puerto Rico Internal Revenue Code. The PRDOH will advance such withholdings to the Government of Puerto Rico's Treasury Department (known in Spanish as *Departamento de Hacienda del Gobierno de Puerto Rico*). The PRDOH will adjust such withholdings provided the CONTRACTOR produces satisfactory evidence of partial or total exemption from withholding.
- F. Compliance with Act No. 45 of April 18, 1935, as amended, 11 L.P.R.A. § 1, et seq.:** The CONTRACTOR certifies and guarantees that at the signing of this Agreement has valid insurance issued by the State Insurance Fund Corporation (CFSE, for its Spanish Acronym), as established by Act No. 45, *supra*, known as the "Puerto Rico Workers' Accident Compensation Act".
- G. Government of Puerto Rico's Agency for the Collection of Child Support (ASUME, for its Spanish acronym):** The CONTRACTOR certifies and guarantees that at the signing of this Agreement that the CONTRACTOR nor any of its Partners, if applicable, have any debt or outstanding debt collection legal procedures with regards to child support payments that may be registered with the Government of Puerto Rico's Child Support Administration. The CONTRACTOR hereby certifies that it is a limited liability company organized and existing in good standing under the laws of the Government of Puerto Rico. The CONTRACTOR shall present, to the satisfaction of PRDOH, the necessary documentation to substantiate the same. The CONTRACTOR will be given a specific amount of time by PRDOH to deliver said documents.

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- H. Compliance with Act No. 168-2000, as amended, 8 L.P.R.A. § 711 , et seq.:** The CONTRACTOR is in full compliance with Act No. 168-2000, as amended, known as "Act for the Improvement of Elderly Support of Puerto Rico."
- I. Compliance with Act No. 1-2012, as amended, 3 L.P.R.A. § 1854, et seq.:** The PRDOH and the CONTRACTOR hereby certify that in signing this Agreement they are in compliance with Act No. 1-2012, as amended, known as "Puerto Rico Government Ethics Act of 2011", in connection with the possibility of a conflict of interest.
- J. Clause of Governmental Ethics Certification of Absence of Conflict of Interests -** The CONTRACTOR certifies that: (1) No public servant of this executive agency has a pecuniary interest in this contract, purchase or commercial transaction. (2) No public servant of this executive agency has requested me or accepted from me, directly or indirectly, for him (her), for any member of his family unit or for any person, gifts, bonuses, favors, services, donations, loans or anything else of monetary value. (3) No public servant (s) requested or accepted any good of economic value, linked to this transaction, from any person of my entity as payment for performing the duties and responsibilities of their employment. (4) No public servant has requested from me, directly or indirectly, for him (her), for any member of her family unit, or for any other person, business or entity, some of economic value, including gifts, loans, promises, favors or services in exchange for the performance of said public servant is influenced in my favor or of my entity. (5) I have no kinship relationship, within the fourth degree of consanguinity and second by affinity, with any public servant who has the power to influence and participate in the institutional decisions of this executive agency.
- K. Ethics.** CONTRACTOR also acknowledges receipt of the Anticorruption Code for the New Puerto Rico known in Spanish as "Código Anticorrupción para el Nuevo Puerto Rico".
- L. Non-Conviction.** The CONTRACTOR certifies that it has not been convicted nor accused of a felony or misdemeanor against the government, public faith and function, or that involves public property or funds, either federal or local in origin. Furthermore, CONTRACTOR also certifies that:
1. It has not been convicted, nor has pleaded guilty at a state or federal bar, in any jurisdiction of the United States of America, of crimes consisting of fraud, embezzlement or misappropriation of public funds, as stated in Act Number 2 of January 2, 2018, as amended, known as the Anti-Corruption Code for the New Puerto Rico, which prohibits the award of Offers or government contracts to those convicted of fraud, misappropriation of public fund.
  2. It understands and accepts that any guilty plea or conviction for any of the crimes specified in Article 3 of said Act, will also result in the immediate cancellation of any contracts in force at the time of conviction, between the undersigned and whichever Government Agencies, Instrumentalities, Public Corporations, Municipalities and the Legislative or Judicial Branches.
  3. It declares under oath the above mentioned in conformity with what is established as in Act Number 2 of January 2, 2018, as amended, known as the Anti-Corruption Code for the New Puerto Rico, which prohibits awarding Offers for government contracts, to those convicted of fraud, embezzlement or misappropriation of public funds.
  4. The CONTRACTOR represents and guarantees that none of its employees, officials or agents have been convicted of a felony or misdemeanor as described in this

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sub-section. Moreover, the CONTRACTOR agrees to notify PRDOH should any employee, official, or agent is convicted of a felony or misdemeanor as described in this sub-section after the date of this Agreement. Said notice shall be made within **ten (10) days** from the time of the conviction.

**M. Other payments or compensation:** The CONTRACTOR certifies that it does not receive payment or compensation for regular services rendered as an official or public employee to another government entity, agency, public corporation or municipality, and knows the ethical standards of his profession and assumes responsibility for his actions.

**N. Consequences of Non-Compliance:** The CONTRACTOR expressly agrees that the conditions outlined throughout this Section are essential requirements of this Agreement; thus, should any one of these representations, warrants, and certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient cause for PRDOH to render this Agreement null and void and the CONTRACTOR reimburse to PRDOH all moneys received under this Agreement.

**XXIV. ACT NO. 18 OF OCTOBER 30, 1975, as amended, 2 L.P.R.A. secs. 97-98**

The parties to this Agreement agree that its effective date will be subject to the due registration and remittance to the Office of the Comptroller of Puerto Rico. No rendering or consideration subject matter of this Agreement will be required before its registration at the Office of the Comptroller of Puerto Rico pursuant to Act No. 18 of October 30, 1975, as amended. The CONTRACTOR will be responsible for ensuring that this Agreement has been registered before the rendering of services by requesting a copy of the registered Agreement with its proper number and date of registry. No services under this Agreement will continue to be delivered after its effective date unless at the expiration date, an amendment signed by both parties and duly registered exists. No services performed in violation of this provision will be paid. The party violating this clause will be doing so without any legal authority, this action will be deemed as *ultra vires*.

**XXV. MEMORANDUM NO. 2021-003; CIRCULAR LETTER 001-2021 OF THE OFFICE OF THE CHIEF OF STAFF OF THE GOVERNOR (SECRETARÍA DE LA GOBERNACIÓN) & THE OFFICE OF MANAGEMENT AND BUDGET (OFICINA DE GERENCIA Y PRESUPUESTO)**

**A. Interagency Services Clause:** Both contracting parties acknowledge and agree that services retained may be provided to any entity of the Executive Branch with which the contracting entity makes an interagency agreement or by direct provision of the Office of the Chief of Staff of the Governor (*Secretaría de la Gobernación*). These services will be performed under the same terms and conditions in terms of hours of work and compensation set forth in this Agreement. For purposes of this clause, the term "Executive Branch entity" includes all agencies of the Government of Puerto Rico, as well as public instrumentalities and corporations and the Office of the Governor.

**B. Termination Clause:** The Chief of Staff (*Secretario de la Gobernación*) of the Governor shall have the power to terminate this Agreement at any time.

**C. Contract Review Policy of the Financial Supervision and Administration Board for Puerto Rico:** The parties acknowledge that the contractor has submitted the certification entitled "Contractor Certification Requirement" required in accordance with the Contract Review Policy of the Financial Oversight and Management Board (FOMB) for Puerto Rico, effective as of November 6, 2017 as amended on October 30, 2020, signed by the Contractor's Executive Director (or another official with an

equivalent position or authority to issue such certifications). A signed copy of the "Contractor's Certification Requirement" is included as **Attachment H** to this contract.

#### **XXVI. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, & EXECUTIVE ORDERS**

The CONTRACTOR acknowledges that HUD financial assistance will be used to fund the Agreement only. Also, the CONTRACTOR shall comply with all applicable Federal, state and local laws, rules, regulations, and policies relating to CDBG-DR and CDBG Program services. This includes without limitation, applicable Federal Registers; 2 C.F.R. part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Community Development Act of 1974; 24 C.F.R. part 570 Community Development Block Grant; applicable waivers; Fair Housing Act, 24 C.F.R. § 35, 24 C.F.R. part 58, 24 C.F.R. part 135; National Historic Preservation Act, and any other applicable state laws or regulations, including the requirements related to nondiscrimination, labor standards, and the environment; and Action Plan amendments and HUD's guidance on the funds. Also, CONTRACTOR shall comply, without limitation, those set forth in **Attachment G** and in compliance with all the requirements described in **Attachment H**.

#### **XXVII. CDBG-DR POLICIES AND PROCEDURES**

In addition to what is established in this Agreement, the CONTRACTOR shall comply with all CDBG-DR program specific and general policies and procedures, including, but not limited to, the Contract and Subrecipient Agreement Manual, OS&H Guideline, MWBE Policy, Procurement Manual and Contractual Requirements, URA & ADP Guidelines, Cross Cutting Guidelines, AFWAM Policy, Section 3 Policy, Personally Identifiable Information, Confidentiality, and Nondisclosure Policy and Conflict of Interest and Standards of Conduct Policy, as found in the CDBG-DR Website ([www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov)), which are herein included and made integral part of this Agreement, as they may be updated from time to time, and reporting requirements as established by the PRDOH.

#### **XXVIII. 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 implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications

for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. 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 sub contracts 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).

G. The Contractor agrees to submit, and shall cause its subcontractors to submit, quarterly reports to the PRDOH detailing the number of new employees hired, the number of new Section 3 employees hired, and any affirmative efforts made to direct hiring efforts to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing during the previous quarter.

H. 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.

#### **XXIX.BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352**

The CONTRACTOR certifies, to the best of his or her knowledge, that:

**A.** -No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

**B.** --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,

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

- C.** -The CONTRACTOR shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). The CONTRACTOR acknowledges that any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The CONTRACTOR certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

### **XXX.EQUAL OPPORTUNITY**

- 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, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 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 considerations for employment without regard to race, color, religion, sex, or national origin.
- C.** -When applicable, the CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D.** -The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and as supplemented by the rules, regulations, and relevant orders of the United States Secretary of Labor.
- E.** --The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of

Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F.--In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

G.--The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (F) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

#### **XXXI.CLEAN AIR 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.
- B.--The CONTRACTOR agrees to report each violation to the PRDOH and understands and agrees that the PRDOH will, in turn, report each violation as required to assure notification to the Government of Puerto Rico, HUD, 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 provided by HUD.

#### **XXXII.SOLID WASTE DISPOSAL ACT**

- 1) 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.
- 2) 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>.

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3) Contractor 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:

- a. procuring only items designated in guidelines of the EPA at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds ten thousand dollars (\$10,000) or the value of the quantity acquired during the preceding fiscal year exceeded ten thousand dollars (\$10,000);
- b. procuring solid waste management services in a manner that maximizes energy and resource recovery; and
- c. establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **XXXIII. WATER POLLUTION CONTROL ACT**

- A. -The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, *et seq.*
- B. --The CONTRACTOR agrees to report each violation to the PRDOH and understands and agrees that the PRDOH will, in turn, report each violation as required to assure notification to the Government of Puerto Rico, HUD, 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 provided by HUD.

### **XXXIV. DRUG FREE WORKPLACE**

The CONTRACTOR should establish procedures and policies to promote a Drug-Free workplace. Further, the CONTRACTOR should notify all employees of its policy for maintaining a Drug-Free workplace, and the penalties that may be imposed for drug abuse violations occurring in the workplace. Further, the CONTRACTOR shall notify the PRDOH if any of its employees is convicted of a criminal drug offense in the workplace no later than **ten (10) days** after such conviction.

### **XXXV. SUSPENSION AND DEBARMENT**

- A. -This Agreement is a covered transaction for purposes of 2 C.F.R. part 180 and 2 C.F.R. part 2424. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).
- B. --The CONTRACTOR must comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. part 2424, 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 PRDOH. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. part 2424, in addition to remedies available to PRDOH, the

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Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- D. -The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C and 2 C.F.R. part 2424, while this Agreement is valid. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **XXXVI. NO OBLIGATION BY THE FEDERAL GOVERNMENT**

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONTRACTOR, or any other party pertaining to any matter resulting from the Agreement.

#### **XXXVII. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The CONTRACTOR acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this Agreement.

#### **XXXVIII. BANKRUPTCY**

In the event that CONTRACTOR files for bankruptcy protection, the Government of Puerto Rico and PRDOH may deem this Agreement null and void, and terminate this Agreement without notice.

#### **XXXIX. ENTIRE AGREEMENT**

This Agreement and all its attachments represent the entire and integrated agreement between PRDOH and the CONTRACTOR and supersede all prior negotiations, representations, agreements and/or understandings of any kind. This Agreement may be amended only by written document signed by both PRDOH and the CONTRACTOR.

#### **XL. MODIFICATION OF AGREEMENT**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if written and signed by both parties, and its authorized representatives. Those amendments shall make specific reference to this Agreement, comply with programmatic policies, procedures, and guidelines. Such amendments shall not invalidate this Agreement, nor relieve or release the Parties from their obligations under this Agreement.

However, PRDOH reserves the right to notify in writing to CONTRACTOR any applicable policies, procedures, regulations, requirements, guidelines, or change in law, whether existing or to be established, as well as changes and/or amendments thereof, and the notified policies, procedures, regulations, requirements, guidelines and laws shall be deemed incorporated by reference to this Agreement without the need of executing a separate written and signed amendment.

#### **XLI. BINDING EFFECT**

This Agreement shall be binding upon and shall inure to the benefit of PRDOH and the CONTRACTOR, their successors and assigns.

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The CONTRACTOR shall not assign this Agreement, in whole or in part, without the prior written consent of PRDOH, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.

#### **XLII. ASSIGNMENT OF RIGHTS**

The rights of each party hereunder are personal to that party and may not be assigned or otherwise transferred to any other person, contractor, corporation, or other entity without the prior, express, and written consent of the other party.

#### **XLIII. NON-WAIVER**

The failure or delay of either party to insist upon the performance of and/or the compliance with any of the terms and conditions of this Agreement shall not be construed as a waiver of such terms and conditions or the right to enforce compliance with such terms and conditions.

#### **XLIV. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Agreement or if a conflict occurs between this Agreement and any Attachment, Appendix, Exhibit, or Schedule, unless otherwise specifically stated in those documents, the order of precedence shall be: Federal laws, regulations, and policies applicable to this Agreement, this Contract and the HUD General Provisions (Attachment G), the Scope of Work (Attachment C), the Cost Form (Attachment D), and lastly, the CONTRACTOR's proposal (Attachment B).

#### **XLV. GOVERNING LAW JURISDICTION**

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

#### **XLVI. CONSOLIDATIONS, MERGERS, CHANGE OF NAME, OR DISSOLUTIONS**

##### **A. Consolidation or Merger**

In the event that the signing party (e.g. Subrecipient, Contractor, or Subcontractor) of the Agreement with the PRDOH moves for a consolidation or merger with another entity (private or public), by its discretion or otherwise, written notice of such decision or event shall be delivered to the PRDOH **at least fifteen (15) days prior to the effective date** of the consolidation or merger. The notice shall include, but not limited to, a description of: the expected effective date of the consolidation or merger; name of each of the constituent entities moving to consolidate or merge into the single resulting or surviving entity; the proposed name of the resulting entity (in case of a consolidation) or the name of the surviving entity (in case of a merger) if necessary; reference to the projected capacity of the resulting or surviving entity to comply with the terms, conditions, obligations, tasks, services, and performance goals or requirements included in the Agreement as well as its Exhibits or Attachments; and a brief summary of the proposed plan to achieve the transition of duties (Scope of Work or Scope of Services), tasks, and performance goals or requirements to the resulting or surviving entity.

Upon the consolidation or the merger becoming effective, and supporting evidence of such event is notified to PRDOH, execution of an Amendment to the Agreement may follow. The Amendment would include, but not limited to, modifications to the clauses that refer to the identity, personal circumstances, address, and any other information related to the signing party deemed relevant by PRDOH for the execution of the

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Amendment. **No amendment to the Agreement will be necessary if the Subrecipient, Contractor, or Subcontractor becomes the surviving entity following a merger.**

Failure to comply with any of the before mentioned conditions, may result in the activation of the termination clauses provided in the Agreement.

**B. Change of Name**

In the event that the signing party (e.g. Subrecipient, Contractor, or Subcontractor) of the Agreement with the PRDOH initiates a change of name process, written notice of such decision or event shall be delivered to the PRDOH **at least fifteen (15) days** prior to the effective date of such event. The notice shall include, but not limited to, a description of: the expected effective date of the change of name; the proposed name; inform of any change of address; and reference of any change in the capacity of the entity to comply with the terms, conditions, obligations, tasks, services, and performance goals or requirements included in the Agreement, as well as its Exhibits or Attachments.

Upon the change of name becoming effective, and supporting evidence of such event is notified to PRDOH, execution of an Amendment to the Agreement may follow. The Amendment would include, but not limited to, modifications to the clauses that refer to the identity, personal circumstances, address, and any other information related to the signing party deemed relevant by PRDOH for the execution of the Amendment.

Failure to comply with any of the before mentioned conditions, may result in the activation of the termination clauses provided in the Agreement.

**C. Dissolution**

In the event that the signing party (e.g. Subrecipient, Contractor, or Subcontractor) of the Agreement with the PRDOH moves for dissolution of the entity, written notice of such decision or event shall be delivered to the PRDOH **at least fifteen (15) days** prior to the effective date of such event. The notice shall include, but not limited to, a description of the expected effective date of the dissolution; and contact information of one or more of its directors, officials or agents. Upon dissolution, becoming effective, and supporting evidence of such event is notified to PRDOH, termination of the Agreement will follow. Consequently, the signing party acknowledges and agrees to provide to the PRDOH, after termination of the Agreement, the assistance reasonably requested to facilitate the orderly transfer of responsibility for performance of the tasks or services to the PRDOH or a third party designated by the PRDOH. Moreover, all finished or unfinished records (files, data, work product) connected with this Agreement will be turned over to PRDOH following the Agreement termination.

**XLVII. HEADINGS**

The titles to the paragraphs of this Agreement are solely for reference purposes and the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

**XLVIII. FEDERAL FUNDING**

The fulfillment of this Agreement is based on those funds being made available to the PRDOH as the lead administrative agency for Recovery. All expenditures under this Agreement must be made in accordance with this Agreement, the policies and procedures promulgated under the CDBG-DR Program, and any other applicable laws. Further, CONTRACTOR acknowledges that all funds are subject to recapture and repayment for non-compliance.

**XLIX. RECAPTURE OF FUNDS**

PRDOH may recapture payments it makes to CONTRACTOR that (i) exceed the maximum allowable rates; (ii) are not allowed under applicable laws, rules, or regulations; or (iii) are otherwise inconsistent with this Agreement, including any unapproved expenditures.

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CONTRACTOR must refund such recaptured payments within **thirty (30) days** after the PRDOH issues notice of recapture to CONTRACTOR.

**L. OVERPAYMENT**

CONTRACTOR shall be liable to the PRDOH for any costs disallowed pursuant to financial and/or compliance audit(s) of funds received under this Agreement. CONTRACTOR shall reimburse such disallowed costs from funds other than those CONTRACTOR received under this Agreement.

**LI. SEVERABILITY**

If any provision of this Agreement shall operate or would prospectively operate to invalidate the Agreement in whole or in part, then such provision only shall be deemed severed and the remainder of the Agreement shall remain operative and in full effect.

**LII. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of whom shall be deemed to be an original, however, all of which together shall constitute one and the same instrument. If the Agreement is not executed by the PRDOH within **thirty (30) days** of execution by the other party, this Agreement shall be null and void.

**LIII. SURVIVAL OF TERMS AND CONDITIONS**

The terms and conditions of this Agreement related to the following subjects shall survive the termination or expiration of this Agreement: interpretive provisions; consideration; warranties; general affirmations, federal assurances, federal and state certifications; CDBG-DR and state funding, recapture of CDBG-DR and/or state funds, overpayment of CDBG-DR and/or state funds; ownership and intellectual property, copyright; records retention methods and time requirements; inspection, monitoring and audit; confidentiality; public records; indemnification and liability; infringement of intellectual property rights; independent CONTRACTOR relationship; compliance with laws; notices; choice of law and venue; severability; dispute resolution; consolidations, merger and dissolution. Terms and conditions that, explicitly or by their nature, evidence the Parties' intent that they should survive the termination or expiration of this Agreement shall so survive.

**IN WITNESS THEREOF**, the parties hereto execute this Agreement in the place and on the date first above written.

**DEPARTMENT OF HOUSING**

**Behar Ybarra & Associates, LLC**

William O. Rodríguez Rodríguez  
William O. Rodríguez Rodríguez (Apr 21, 2021 15:19 EDT)

**William O. Rodríguez Rodríguez, Esq.,**  
Secretary

Miguel A. Pérez Correa  
Miguel A. Pérez Correa (Apr 20, 2021 16:48 EDT)

**Miguel A. Pérez Correa**  
Member  
DUNS No. 969107429



**Award Notice  
Request for Proposals  
Increased Capacity- Environmental Services  
CDBG-DR-RFP-2020-02**

March 17, 2021

Tel. 787-783-0290  
Email: mperez@byaea.com

Miguel Perez Correa  
Behar Ybarra & Associates LLC  
554 Perseo St Suite J3 Cond. Iberia I,  
Altamira San Juan, PR 00920

**Re: Request for Proposals No. CDBG-DR-RFP-2020-02  
Increased Capacity- Environmental Services**

Dear Mr. Pérez Correa,

On July 17, 2020, the Puerto Rico Department of Housing (PRDOH) issued the Request for Proposal No. CDBG-DR-RFP-2020-02 for increased Capacity- Environmental Services (the RFP-2020-02) under the Community Development Block Grant for Disaster Recovery (CDBG-DR). This RFP seeks to select one or more qualified firms to provide aid to augment the capacity of the environmental services needed for the implementation of the R3 program as related to programs under the CDBG-DR grant(s) for a period of three years with optional extensions of up to two additional years.

On March 12, 2021, the Bid Board of the Puerto Rico Department of Housing (the Board) with quorum duly constituted, pursuant Article II, Section 1 (e) of the Regulation No. 9075 of February 26, 2019, on the Procurement Manual and Contractual Requirements for CDBG-DR (Regulation 9075), upon evaluation of the recommendation issued by the CDBG-DR Procurement Division regarding the process for the Increased Capacity- Environmental Services under the RFP-2020-02, including the Evaluation Committee Report dated December 16, 2020, decided to award the RFP-2020-02 to Tetra Tech Inc for \$4,796,250 with an initial three year term with two optional extensions of one year and Behar Ybarra LLC for \$5,412,938 with an initial three year term with two optional extensions of one year for Increased Capacity- Environmental Services under the CDBG-DR program. **(Exhibit I-Bid Board Resolution dated March 12, 2021).**

In response to the RFP-2020-02, Behar Ybarra & Associates LLC submitted a Proposal to the PRDOH on August 19, 2020. In addition to the Proposal submitted, the PRDOH received six additional Proposals for a total of seven Proposals in response to the RFP-2020-02:

1. CMA Architects & Engineers LLC
2. Behar Ybarra & Associates LLC.
3. Jacobs Puerto Rico Inc.
4. Tetra Tech Inc.
5. Innovative Emergency Management Inc
6. BLN PR
7. CIS International LLC

The proposals were evaluated by an Evaluation Committee appointed by virtue of Administrative Order No. 20-31 dated August 31,2020. The Evaluation Committee performed an evaluation of the Proposals based on the criteria stated in the RFP-2020-02. The following criteria were considered as part of the evaluation:

- Mandatory Requirements (Pass/Fail) (Section 6.1 of the RFP)
- Qualifications (50 Points) (Section 6.2. of the RFP)
- Work Approach (50 Points) (Section 6.3. of the RFP)
- Cost Proposals (35 Points) (Section 8)
- Preference of 5 points Section 3 Business Concern (Section 7 of the RFP)
- Preference of 5 points MWBE (Section 7 of the RFP)

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Initial evaluation considered the Mandatory Requirements of the Proposals stated in Section 6.1 of the RFP-2020-02. Those Proposers whose Proposals passed the Mandatory Requirements were evaluated by the Evaluation Committee for Qualifications and Work Approach. To be considered "Qualified", Proposers needed to obtain a score greater than or equal to 70 points in the evaluation of their Qualifications and Work Approach. Three Proposers, Behar Ybarra & Associates LLC, Tetra Tech Inc and Jacobs Puerto Rico Inc, were considered "Qualified" for the services. A summary of the results of the evaluation of each Proposal is shown in **Table 1** below:

**[Remainer of Page Left Blank Intentionally]**

Table 1: Proposals Evaluation Summary

| PROPOSER                            | MAN.<br>REQ.<br>PTS. | QUAL.<br>REQ.<br>PTS. | WORK<br>APP. | SECT.<br>3/MWBE | OVER.<br>TECH | QUALIFIED | OVERALL<br>PROP COST | COST<br>PROPOSAL<br>POINTS | TOTAL<br>PROPOSAL<br>POINTS |
|-------------------------------------|----------------------|-----------------------|--------------|-----------------|---------------|-----------|----------------------|----------------------------|-----------------------------|
| Behar Ybarra & Associates LLC       | PASSED               | 48.7                  | 49.7         | 0               | 98.4          | YES       | \$7,762,500          | 15.2                       | 113.6                       |
| BLN PR                              | FAILED               | 0                     | 0            | 0               | 0             | NO        | N/A                  | 0                          | 0                           |
| CIS International LLC               | PASSED               | 37.5                  | 11.6         | 0               | 49.1          | NO        | N/A                  | 0                          | 0                           |
| GMA Architects & Engineers LLC      | FAILED               | 0                     | 0            | 0               | 0             | NO        | N/A                  | 0                          | 0                           |
| Innovative Emergency Management Inc | PASSED               | 43.7                  | 31.7         | 5               | 80.4          | NO        | N/A                  | 0                          | 0                           |
| Jacobs Puerto Rico Inc              | PASSED               | 42.5                  | 50           | 5               | 97.5          | YES       | \$12,195,000         | 9.6                        | 107.1                       |
| Tetra Tech Inc                      | PASSED               | 45.6                  | 47           | 10              | 102.6         | YES       | \$3,922,500          | 30                         | 132.6                       |

Tetra Tech Inc., Behar Ybarra & Associates LLC and Jacobs PR, were considered Qualified for the services. According to Section 9.3 of the RFP, once the technical evaluation of the proposals was completed, the Evaluation Committee evaluated the Cost Proposals submitted by all three Qualified Proposers Behar Ybarra & Associates, Tetra Tech, Inc. & Jacobs PR Inc. using the formula below:

Cost Proposal Points =  $\frac{\text{Lowest Proposal Cost Received}}{\text{Proposal Cost}} \times [\text{Max. Cost Proposal Points}]$

The Evaluation Committee combined the technical evaluation (Qualifications and Work Approach) and Cost Proposal Points and obtained the Total Proposal Points included in Table 1. The Evaluation Committee recommended negotiations with the three qualified proposers, with the intent of allowing qualified proposers to revise their Cost Proposals, in order to maximize the PRDOH availability to obtain the best possible offer, based on the requirements of the RFP. The PRDOH Procurement Division, based on the recommendation of the Evaluation Committee, opened negotiations with the Qualified Proposers.

On December 23, 2020, the Procurement Division and the Programmatic Area joined during clarifications meetings in which Qualified Proposers had the opportunity to explain how the tasks will be provided in accordance with the scope of the RFP. During the meetings, the Procurement Division provided with some clarifications regarding proposers assumptions for the environmental services.

On January 4, 2021, the Procurement Division sent a letter to Behar Ybarra & Associates, Tetra Tech, Inc. & Jacobs PR Inc to request to revise their Cost Proposals. After the qualified proposers submitted their revised Cost Proposals, each qualified proposer's cost proposal points were revised in order to obtain the total proposal points. **Table 2** summarizes evaluation results after BAFO:

**Table 2: Evaluation results after revised Cost Proposals for Increased Capacity-Environmental Services**

| PROPOSER                        | MAN. REQ.<br>PTS | TOTAL<br>POINTS | QUALIFIED | REVISED COST<br>PROPOSAL | COST<br>PROPOSAL<br>POINTS | TOTAL PROPOSAL<br>POINTS |
|---------------------------------|------------------|-----------------|-----------|--------------------------|----------------------------|--------------------------|
| BEHAR YBARRA<br>&ASSOCIATES LLC | PASS             | 98.4            | YES       | \$4,825,875              | 22.3                       | 120.7                    |
| TETRA TECH INC.                 | PASS             | 102.6           | YES       | \$3,592,500              | 30                         | 132.6                    |
| JACOBS PR INC.                  | PASS             | 97.5            | YES       | \$10,807,500             | 9.9                        | 107.4                    |

As illustrated in **Table 2**, after corresponding negotiations by the Procurement Division, Tetra Tech, Inc. achieved the highest total proposal score of 132.6 points, followed by Behar Ybarra & Associates LLC with 120.7 points and Jacobs Puerto Rico, Inc with 107.4 points. The PRDOH compared proposed unit prices per task and revised contracts for similar services to determine reasonable cost. After thoroughly evaluating the BAFOs received from the Qualified Proposers, the Procurement Division determined that Tetra Tech Inc and Behar Ybarra & Associates LLC revised Cost Proposals were one of reasonable cost for the services. The Procurement Division concluded that Jacobs Puerto Rico, Inc. revised cost proposal was unreasonable even after taking under consideration variables such as contracts of similar scope and scale.

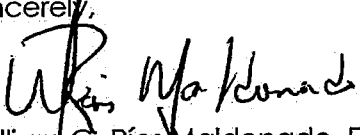
The list of Proposers, which is attached hereto and made an integral part hereof as **Exhibit II**, details the contact information of all Proposers that submitted a Proposal in response to RFP-2020-02.

Any person, party or entity that considers itself having been adversely affected by an award determination of the Bid Board made under the provisions of the Regulation 9075, may file a petition for reconsideration with the Bid Review Board (Request for Reconsideration) within 20 days from the date on which a copy of the Award Notice was duly notified in accordance with Section 3.19 of Act 38-2017, Uniform Administrative Procedures Act of the Government of Puerto Rico (LPAU). Simultaneously, with the filing of the Request for Reconsideration, said person, party or entity shall submit a copy of the Request for Reconsideration to all the parties in the process and to the PRDOH. Alternatively, a petition for review may be filed before the Court of Appeals of Puerto Rico.

The mere presentation of a Request for Reconsideration will not have the effect of halting the contested award. The Bid Review Board may or may not consider the Request for

Reconsideration. The terms in relation to this action or lack of action, as well as its Judicial review shall be those established in LPAU, supra.

Sincerely,

  
William G. Ríos Maldonado, Esq.  
Procurement Division Director  
CDBG-DR  
Attachments

cc:

Mrs. Adalgisa Polanco Reyes  
Secretary

I hereby certify that this notice of award was delivered to all Proposers listed in **Exhibit II**.

Receipt Number: 7004 2510 0007 0093 0660

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GOVERNMENT OF PUERTO RICO  
Department of Housing

## Attachment B

**RESPONSE TO REQUEST FOR PROPOSAL FOR  
INCREASED CAPACITY - ENVIRONMENTAL SERVICES  
UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT  
DISASTER RECOVERY**

**CDBG-DR-RFP-2020-02**

**QUALIFICATIONS AND WORK APPROACH**

Submitted to:

Government of Puerto Rico  
Puerto Rico Department of Housing

Submitted by:

**BEHAR YBARRA & ASSOCIATES LLC**  
554 Perseo St., Suite J-3 Altamira, San Juan P.R. 00920, 787-783-0290

Submitted by:

**Miguel A. Pérez Correa, Member**  
554 Perseo St., Suite J-3 Altamira, San Juan P.R. 00920, 787-783-0290  
mperez@byaea.com

**Submission Date:**

August 19, 2020

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# ● Work Approach

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**Work Approach**

**1. Project Approach – General Administration and Coordination**

Behar Ybarra & Associates LLC (BYA) will implement a comprehensive approach to develop the project to the complete satisfaction of the PRDOH. This process is intended to facilitate and establish a proposed method, to create good communication between the PRDOH and BYA, and to ensure the submittal of quality products. In order to do so, BYA will perform the following tasks:

**Project Management** - The project set up and structure will report the status of the project budget, work effort, progress and schedule. The project will use and will be compatible with the established PRDOH systems, policies, procedures and practices and/or any formats and procedures to be developed. Reports should be straight-forward, easy to read and understand, logically organized and structured to provide relevant and precise information. The project management system shall feature safeguards for the early identification of issues and their effective resolution.

**Progress Meetings** - The BYA Team will conduct, in association with PRDOH, progress meetings in order to track the progress of the project. Meetings will be held once a month, if required by the project, at the PRDOH offices. All meeting minutes and action item lists will be kept and distributed to a standard list of recipients. Minutes will be distributed within three working days of the meeting.

**Project Master Schedule** - The BYA Team will develop and maintain a Project Master Schedule (PMS) using the Microsoft Project software and will be in accordance with the PRDOH guidelines. The initial PMS will be submitted to PRDOH for review. Upon its approval, the PMS will be recorded in the file as the Target Schedule (TS). The PMS will be updated on a monthly basis to correspond with the submission of the Monthly Progress Report. The original TS will be shown as a bar below each task.

**Project Accounting** - Each month, an invoice and progress report will be submitted to the PRDOH Project Manager. The report will document the percent completed by task during the previous month, the cumulative percent completed to date, a comparison with the schedule, a description of tasks or deliverables completed during that month, and a dollar amount for which the BYA Team is requesting payment.

**Project Progress Reporting** - The BYA Team will provide PRDOH's designated Project Manager with a Monthly Progress Report that conforms to the PRDOH guidelines.

**QA/QC Procedures** - The BYA Team will be responsible for insuring that all work products conform to the PRDOH Quality Assurance and Quality Control (QA/QC) Plan. This will be accomplished through an internal QA/QC process performed by the BYA Team. This QA/QC process will ensure that quality is

achieved through checking and reviewing all works or activities. A summary of the Firm QA/QC is presented later in this Work Approach.

## **2. Plan for managing, developing and/or implementing the Scope of Work**

After the Order to Proceed, the BYA Team will carry out a meeting with PRDOH staff and any project partner to discuss the proposed schedule and review the project plan. After this meeting, the following steps will be performed in order to support PRDOH in the CDBG-DR Programs and achieving HUD's goal of providing a safe, suitable living environment.

### **Sub task 1: Environmental Surveys and Assessments**

#### **Step 1: Data Gathering**

The first task in the data gathering is to obtain all the projects that need to be evaluated. After PRDOH handle the list of projects, the BYA Team will start gathering the available data for each site. A preliminary grouping will be performed to organize projects by municipalities, areas, and Tier 1. This will streamline field visits trying to get the most out of each day. It is expected that the PRDOH will provide a damage assessment with an estimated cost of repairs and an appraisal report to the environmental consultant for each site. Once organized, a Central Data File for source documentation will be prepared.

#### **2a-Central Data File (CDF)**

A CDF will be useful for managing statutory and environmental issues that are common to many projects and programs. Source documentation is the documentation and reference material that supports determinations made for the statutory authorities (§58.5) and other requirements (§58.6).

Locating source documentation in the CDF will allows the Team to collect in one place material that is common to a wide-range of activities or resources among more than one activity and, easily update information on a periodic or as-needed basis. This tool will be useful to streamline the time it may take to complete the environmental review per project. The BYA Team will develop and will keep the CDF for the duration of the project and will make it available to PRDOH through specific software to share data.

#### **Step 2: Initial Environmental Review**

As part of the tasks to be performed, a record review will be conducted to obtain and review records that will help identify recognized environmental conditions in connection with the property evaluated. A base map including the Environmental Considerations will be prepared by our GIS Specialist to help the Environmental Specialists identify environmental issues that potentially impact the proposed works. These

Environmental Considerations will be in accordance with the duties related to Part 58 of the 24 Code of Federal Regulations. All Part 58 environmental reviews must comply with the related laws and authorities listed in 24 CFR Part 58.6:

|                           |  |
|---------------------------|--|
| Airport Hazards           | Notification requirements of the purchase or sale of existing property in a Runway Clear Zone or Clear Zone – 24 CFR Part 51 Subpart D |
| Coastal Barrier Resources | Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990.  |
| Flood Insurance           | Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994  |

Only reviews that require a higher level of review must address the additional laws and authorities listed in 24 CFR 58.5:

|                                   |  |
|-----------------------------------|--|
| Air Quality                       | Clean Air Act                              |
| Coastal Zone Management Act       | Coastal Zone Management Act                |
| Contamination and Toxic Substance | 24 CFR 50.3 & 58.5                         |
| Endangered Species Act of 1973    | Endangered Species Act of 1973             |
| Explosive and Flammable Hazards   | 24 CFR Part 51                             |
| Farmlands Protection              | Farmlands Protection Policy Act of 1981    |
| Floodplain Management             | Executive Order 11988                      |
| Historic Preservation             | National Historic Preservation Act of 1966 |
| Noise Abatement and Control       | 24 CFR 51                                  |
| Sole Source Aquifers              | Safe Drinking Water Act of 1974            |
| Wetlands Protection               | Executive Order 11990                      |
| Wild and Scenic Rivers            | Wild and Scenic Rivers Act of 1968         |
| Environmental Justice             | Executive Order 12898                      |

The BYA Team will perform and document as part of the Environmental Considerations assessment the presence of any potential adverse environmental conditions for evaluation during preparation of the Tier II Environmental Review Record (ERR) or other Categorical Excluded reviews.

As part of this review, a review of databases (such as NEPAassist and others) is required to ascertain if past activities could have impacted the site. NEPAassist is a tool that facilitates the environmental review process and project planning in relation to environmental considerations. The web-based application draws environmental data dynamically from EPA's GIS databases and web services and provides immediate screening of environmental assessment indicators for a user-defined area of interest. These features

contribute to a streamlined review process that potentially raises important environmental issues at the earliest stages of project development. Any testing that is required to support this determination or any other will be submitted for approval by PRDOH on a by-case basis under Specialized Services. Where contamination is present, the BYA Team will identify the appropriate mitigation measures, the contaminant of concern and the location of the contamination.

The Associates Environmental Science Specialist will revise the map created and the data available prior to site visit to be aware of the potential environmental issues that must be observed and identified during the field visit.

***Deliverables:*** A Preliminary Environmental Review will be developed for each site visited and will be included as part of the Site Visit Report to be generated after each field visit.

**Step 3: Field Visits**

Field visits will be carried out to execute a field assessment and obtaining the field data required to execute the Scope of Services presented in this RFP. Each site/unit will be visit to assess the visible aspect of the structure. These site inspections will be performed using an iPad that contain the *Survey 123 Application*. Survey123 for ArcGIS is a simple and intuitive form-centric data gathering solution to create, share and analyze surveys. Our Team will design surveys that enable rapid collection with predefined questions that use logic and provide easy-to-fill answers, embedded audio and images, and offer many languages. Using the Survey 123 app, the inspectors will collect data via web or mobile devices, even when disconnected from the Internet. They will be able to analyze results quickly, and upload data securely for further analysis. Photos will be uploaded at site location on the Survey 123 app. The Survey 123 app output will be generated in a way that facilitates the transfer of information to fill the Field Visit Report to help save time and effort. For each project, the BYA Team will assess the feasibility of the proposed project in relation to the required level of environmental review and will make a recommendation to PRDOH as to the appropriate level of review.

***Deliverables:*** Field Visit Report including a site location Figure showing the GPS, photographs, and a written description of the visual determination if there are any potential environmental concerns or other items of interest. A Field Visit Report will be generated for each visit.

The BYA Team will notify the PRDOH if any additional requirement, studies, reviews and/or assessment is needed to complete this task.

**Time Frame:** The BYA Team expect to perform the field visit in 4 hours, trying to at least visit two sites per day per crew. The Field Visit Report will be deliverable two days after the visit. Using the Survey Application 123 allows us to accelerate the process and deliver quickly.

**Sub task 2: Environmental Review (ER)**

An Environmental Review (ER) is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The ER process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. Not every project is subject to a full environmental review (i.e., every project's environmental impact must be examined, but the extent of this examination varies), but every project must be in compliance with the National Environmental Policy Act (NEPA), and other related Federal and state environmental laws. Figure 1 presents a flow chart describing the ER Process as defined by HUD. The four environmental classifications are: Exempt Activities, Categorically Excluded Activities, Activities Requiring an Environment Assessment, or Activities Requiring an Environmental Impact Statement.

For each project, the BYA Team will conduct ER on an as-needed basis in accordance with the required level of clearance. ERs must, at a minimum, comply with the requirements of the Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56), the NEPA (including implementing regulations at 40 CFR 1500 and 24 CFR 58), the Environmental Public Policy Act of Puerto Rico, as amended (Law Num. 416-2004), and the Puerto Rico Permit Process Reform, as amended (Law Num. 1612009) along with any other local environmental review requirements.

The BYA Team will assess the feasibility of the proposed project in relation to the required level of environmental review and will make a recommendation to the PRDOH as to the appropriate level of review (e.g. Environmental Impact Statement, Environmental Assessment, Categorically Excluded, Exempt, etc.).

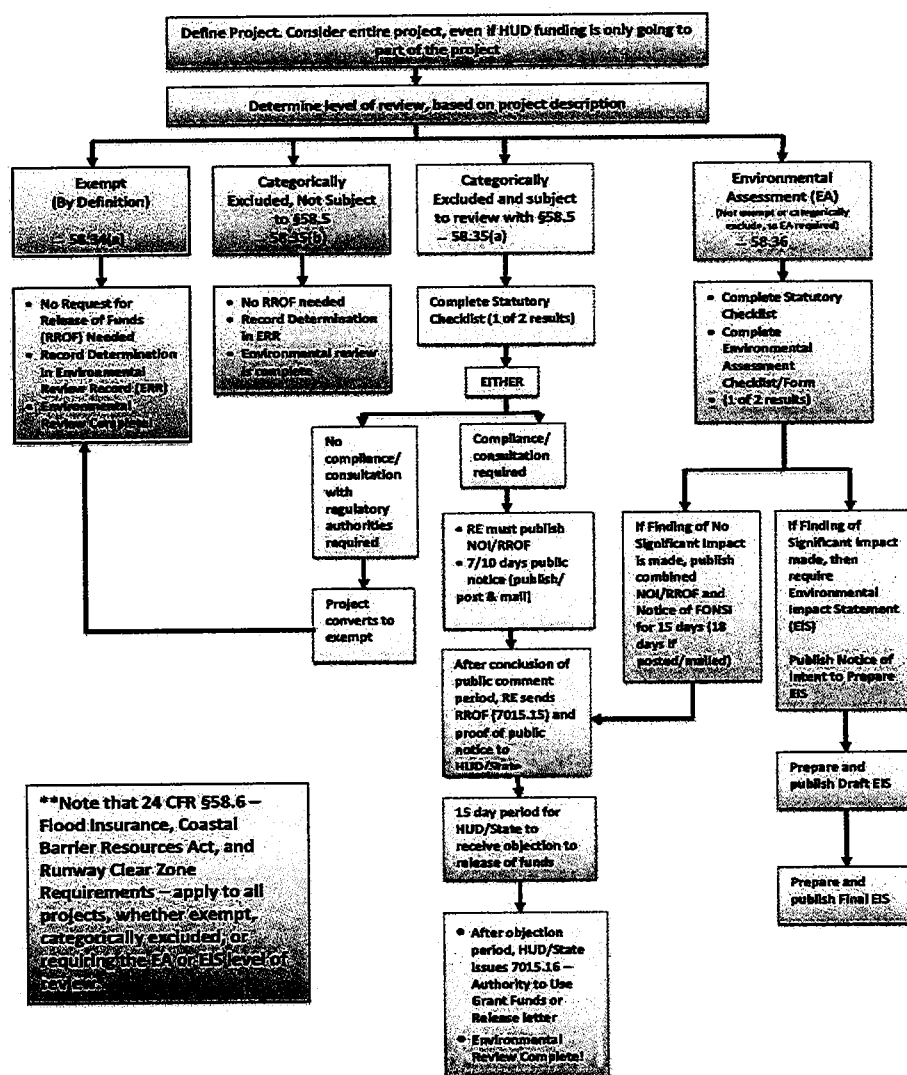
For each assigned project, the BYA Team will create an Environmental Review Record ("ERR") meeting the above legal requirements and documenting PRDOH's review and compliance with the related federal authorities listed in 24 CFR 58. This will include structure verification of dates of construction with aerial imagery, and the preparation of brief forms, as needed, by staff meeting the Secretary of Interior's Professional Qualifications Standards for Architecture or Architectural History for submission to the SHPO regarding structures 45 years in age or greater that are recommended as not eligible for listing in the National

Register of Historic Places. The BYA Team will be responsible for coordinating with the PRDOH and the oversight/regulatory agencies to assure that compliance documentation is obtained for each ERR.

### Finalize the review

Figure 1: Environmental Review Process as defined by HUD

Once the BYA Team determined and documented compliance with all of the required environmental factors, they can begin finalizing the review. Attachment A includes a description of the environmental factors, applicable legislation, applicability, general requirements, and coordination or consultation required). The first step in completing the environmental review process is to package the ERR. Depending on the level of review, there are different measures that must be taken in order to



complete the review. The BYA Team will use checklists developed for each type of level of review to ensure the compliance of each projects. Checklists will be used during all the steps of the ERs. Use of the checklists will focus environmental assessments efforts and assures that all regulatory requirements have been met.

A Statutory checklist that covers statutes, regulations, and Executive orders, other than NEPA will be used. If the project is categorically excluded from NEPA, this is the only checklist to be used. If the project is not excluded, then the Statutory Checklist will be completed in conjunction with the Environmental



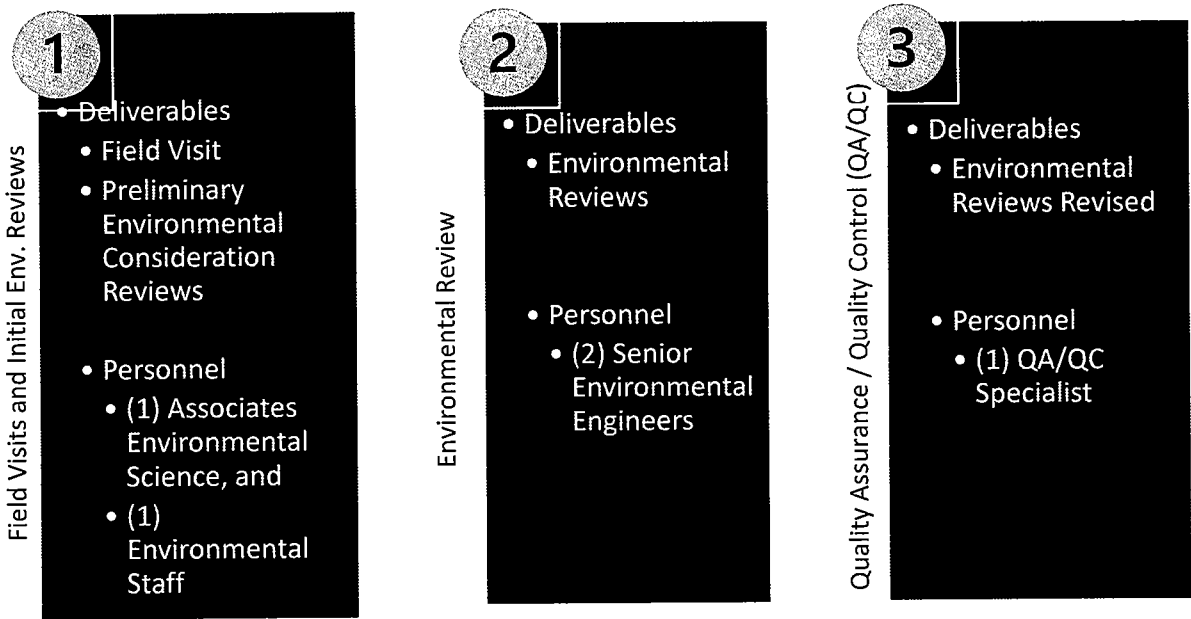
Assessment Checklist (EAC). The EAC will help to organize an early consideration of numerous environmental issues and will record anticipated impacts.

Currently, HEROS is not being used for the housing program. The Tier II ERRs have a template that is housed in the system of record that will be available to the BYA Team for use in completing the Tier II. For any other reviews that may be associated with the housing program, the standard forms available on the HUD Exchange will be used, as necessary.

The following activities are included in this task, as may be required by PRDOH on a project by-project basis:

- Maintain contact list of governmental and non-governmental stakeholders.
- Mail, email and otherwise distribute legal notices to interested stakeholders.
- Assist PRDOH in arranging publications, summarizing comments and preparing responses to comments as necessary.
- Create and coordinate summary reports to update PRDOH on each project's status and compliance.
- Perform any other duty that relates to 24 CFR Part 58, HUD ERs and Puerto Rico's Environmental Laws and other environmental requirements.

The BYA Team expect to deliver 56 Tier 2 Site-Specific ER and 25 Re-evaluation of Project intent to PRDOH monthly as part of the provision of environmental services. Our project manager will lead the environmental efforts with the help of two (2) Senior Environmental Engineers. These two Seniors Engineers will be in charge of the environmental reviews and re-evaluations. The assigned properties will be divided in two equal groups. This division will take into consideration the location of the cases to be assessed. A crew including one (1) Associates Environmental Science and one (1) Environmental Staff will performed the field visit using the Survey 1213 application as described previously. They will be visiting the proposed 56 sites each month and will provide the Field Visit Reports and Preliminary Environmental Consideration Reviews to the Senior Environmental Engineers. The Senior Environmental Engineers will generate the Environmental Reviews in accordance with the applicable federal. State, and local laws and regulations. As a last step and to ensure the quality of the final product, the QA/QC specialist will review the ER using a checklist to make sure that the review is correct and meets specifications.



Mitigation of Risk that may impact the schedule

The BYA Team will confirm each night and morning the availability of the field visit crew for next day works. In case where one of the team members could not attend, a replacement will be provided. In cases where the team could not proceed to the field for natural reasons, the BYA Team will work to accommodate those sites in other days without impacting the schedule. BYA has the availability to add additional staff or replacements if needed.

**Deliverable:** Generation of Tier II ERRs for the R3 program for each assigned property. The BYA Team will evaluate the Tier II Specific Review for Environmental provided by the PRDOH. As clarified in the Answer to Questions and Request for Clarifications, the Tier II EERs have a template that is housed in the system of record that will be available to the Team for use in completing the Tier II. For any other reviews that may be associated with the housing program, the standard forms available on the HUD Exchange will be used, as necessary.

**Timeframe:** ERs (Tier 2 Site-Specific Environmental Review) deliverables will be furnished within 10 business days of the field visit. Additional time may be awarded for complex cases.

The BYA Team expect to deliver 56 Tier 2 Site-Specific Environmental Review and 25 Re-evaluation of Project intent to PRDOH monthly as part of the provision of environmental services.

**Subtask 3: Re-evaluation of environmental based on a change in the Project Intent**

ERR are living documents, and they may need to be updated even after the environmental review has been completed. One of the three major reasons for revisiting a review is to reevaluate the project. Reevaluation of a project is necessary under the following circumstances:

- The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;
- There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact; or
- The recipient proposes the selection of an alternative not in the original finding.

The EER should be updated, and the responsible entity should confirm whether the original findings are still valid. If the original findings are no longer valid, a new environmental assessment must be prepared.

The BYA Team will review the project intent to make the corresponding adjustments whenever it is determined that the construction work to be carried out is different from the one originally established. In order to fulfil with this task, the BYA Team will be available to meet with PRDOH and any other project partner to discuss the project intent and the implication of the changes. If needed, our Team will be responsible for coordinating with the project sponsor and the oversight/regulatory agencies to assure compliance documentation is obtained for each ERR.

As described in the previous subtask, the BYA Team will review existing ERR according to the regulations to ensure that the ER is according to the proposed project intent. The BYA Team will review the assessment of the feasibility of the proposed project in relation to the required level of environmental review and will make a recommendation to the PRDOH as to the appropriate level of review needed. The BYA Team will perform any other activity needed to accomplish this task, including duties related to the 24 CFR Part 58, HUD ERs and Puerto Rico's Environmental Laws and regulations and other environmental requirements.

***Deliverables:*** A revised ERR will be deliver for each assigned case. Each deliverable will include a concise rationale documenting environmental findings and supporting the proposed determination.

**Time Frame:**

The revised ERR will be deliver in a time frame of 5 to 7 days depending on the complexity of the project intent.

**Specialized Services on Standby**

The environmental review process might require the performance of specialized services to assess the potential impacts on resources such as: wetlands, historical and archeological, endangered species, and environmental site assessment.

**Wetlands**

If needed, for compliance and documentation, the environmental review record should contain one of the following:

- Documentation supporting the determination of exception.
- Documentation supporting the determination that the project does not involve new construction (as defined in Executive Order 11990), expansion of a building’s footprint, or ground disturbance.
- A map or other relevant documentation supporting the determination that the project does not impact an on- or off-site wetland.
- A completed 8-Step Process including a map and the early and final public notices.

The BYA Team will prepare a certified survey plan illustrating the wetland limits along the site according to the existing regulations and/or laws. With this plans the BYA Team will prepare estimates of impacts of jurisdictional areas affected by the proposed action. The BYA Team will identify all wetlands within the site in accordance with the disposition of the regional supplement to the Corps of Engineers Wetland Delineation Manual and the USACE’s approved jurisdictional Determination Form.

**Environmental Surveys and Assessments (ESA)**

The specific services required under this task include the completion of ESA. The purpose of these assessments is to perform hazardous materials environmental site assessment including at a minimum, Phase 1 assessments with the ASTM protocols. An ESA Phase 1 involves collection of information about past activities and events which have resulted or could result in contamination on a property and site visit.

**Deliverables:** A Phase I ESA Report will be prepared in accordance with ASTM Standards. This document will include conclusions and recommendations; that will determine whether a Phase II is necessary and where.

**Phase II Environmental Site Assessment**

An ESA Phase II report is an intrusive study where actual physical environmental samples are collected and analyzed to characterize the type, distribution and extent of hazardous substances in the environment.

Further analysis into the specific site details during the Phase I process will determine, if any of these previous uses have created a significant potential for a release or if a known release has occurred.

**Deliverables:** A report that will include conclusions, recommendations, and mitigation measures and hazardous waste remediation plans (if required).

### **Historical and Archeological Studies**

#### **Phase I Reconnaissance Survey (Phase I)**

A Phase I survey will be conducted to determine a particular site's sensitivity to the presence of historic properties. Archival research and a walkover survey provide initial information (Phase IA), while the excavation of novel test pits further solidifies the educated guess of the archaeologist (Phase IB). Reporting on the Phase I includes an overview of the general area's geographic and historic context, all archival and field data, and recommendations for either further archaeological work or for the project to proceed.

#### **Phase II Intensive Survey**

Should a Phase I survey have positive results as to the presence of material culture, a Phase II survey is conducted to determine the vertical and horizontal extension of the site, its integrity and its eligibility to the National Register of Historic Places (whether the findings make up a historic property).

### **3. Timely Submittal and Quality Services - Quality Assurance/Quality Control (QA/QC)**

The BYA Team will be responsible for insuring that all work products conform to the PRDOH QA/QC Plan. This will be accomplished through an internal QC process performed by the BYA Team. This QC process will ensure that quality is achieved through checking and reviewing all works or activities.

The BYA Team has developed a QA/QC Plan that addresses project organization, documentation, and plan-checking requirements. This comprehensive plan sets forth checking, back checking, incorporation, and verification processes. The plan includes:

- The Project Manager complete and final QA/QC checks of all documents prior to each submittal along with retaining the check sets for future audit reviews.
- The performance of independent QA/QC reviews for each element, by qualified personnel.
- BYA will retain and archive, for at least ten years after the completion of the construction, all quality control and assurance documents including the QC, QA, check prints and copies for all deliverables including plans, reports, calculations and quantity computations. Quality control files shall be maintained in an orderly manner, ready for examination, to demonstrate that high quality standards have been met during the development of the project.

- Use of a structured checking, back checking, and verification system through industry standard color coded checks and marks to promote quality control, quality assurance and peer reviews.
- Checking all deliverable for accuracy, presentation and readability.
- Confirmation that all review comments, including the responses and agreements have been documented, addressed, incorporated and verified.
- Completing and using the appropriate design and submittal sufficiency *checklists* throughout the development of the project to eliminate oversights and omissions.

Creating a careful strategy to track project deliverables is essential to keep a project on time and within scope. By investing time and resources at the beginning of the project into understanding the expectations and objectives of each deliverable, we can ensure the project stays on track and ensure that all key stakeholders are up to date with the progress on the deliverable. Careful tracking of project deliverables is an extremely valuable tool to help ensure a successful project. Thus, the BYA Team will follow the following steps to provide timely submittals.

1. Define Deliverables Before Starting Work
2. Understand Requirements of the Deliverable
3. Start by Getting Input from Stakeholders (PRDOH)
4. Determine Whether it is an Internal or External Deliverable
5. Understand the Distinction Between Process and Project Deliverables
6. Set Clear Deadlines
7. Set Milestones
8. Use an Online Software Tool – The BYA Team will use an online project management software to help eliminate errors and streamline the process of tracking deliverables for fast, accurate results. The use of this tool will facilitate keeping the project up to date and being able to make adjustments in the event that some resources are delayed.

**4. BYA overall plan to ensure compliance with applicable federal, state, and local laws and regulations**

Understanding applicable environmental laws and regulations as well as client requirements is fundamental to compliance and to responsible, effective performance. Our team knows the requirements of environmental laws because most of our projects require to do an environmental evaluation of the proposed action following federal and local environmental laws and regulations.

Many laws are continually reviewed and their requirements for compliance change. Our Team will participate in a refresher course before the project commence to make sure that every team member knows

the requirements of the current federal, state, and local laws and regulations. If a revision to any of the laws or regulations occurs, our team will be trained to have that new knowledge. Effective environmental training helps individuals understand the environmental requirements associated with their work, the environmental impact of the work, the risks associated with the work, and the physical conditions and behaviors necessary to control risks.

**5. Approach to identify and solve mitigation issues during the project**

The primary scope of our approach to solve/mitigate issues during the project will be to identify previous issues to develop a plan to prevent future and similar damages. This will help build safer, stronger communities and save future disaster-related losses. The BYA Team will overcome constraints and limitations by:

- Help avoid repetitive damage from disaster
- Improves resilience
- Promote hazard mitigation because every \$1 spent in hazard mitigation leads to \$6 in future savings.
- Provides long term solutions to problems
- Support risk reduction activities

The preliminary environmental screening to be performed before the on site visit will provide the Environmental Specialist with a clear idea of the potential issues that may be found by site and will provide an idea of what to expect when performing the field visit.

In case of identification of an environmental crisis, the BYA Team will notify immediately the authorities and will coordinate with the PRDOH personnel. The goal is to rebuild in ways that are safer and stronger by incorporating preparedness and mitigation into the rebuilding of facilities.

**6. Specific examples of past deliverables ESAs and environmental reviews**

The BYA Team has participated in multiple projects where environmental considerations have been an important component to development the projects. The progress of the society could not be achieved by harming the environment. Thus, almost all our projects included the environmental assessment of the potential impacts of the proposed actions. Two Specific examples where the Team has performed ESAs are the Eastern Federal Land Highway Division (EFLHD)/HDR Inc. PR-ST FEMA PR(1)-C1, Eastern part of Puerto Rico, various locations and the PRHTA, AC-803544 ER-9999 (312) Landslide Project. The first project consisted of visiting sites damaged by Hurricane Maria, assessing damages, developing Damage Description and Dimensions reports (DDD), developing scopes of work to both repair the facility

to pre-existing conditions and for incorporating hazard mitigation measures to the facility, as well as for the replacement of the facility as needed. The project scope was to evaluate the existing conditions to determine the extent of damages by the execution of sites reconnaissance, investigations, and studies necessary to provide appropriate recommendations to reconstruct the sites to its previous condition.

BYA led the environmental efforts by reviewing existing environmental documents and preparing Environmental Recommendations Memorandums (Environmental Reviews). For each site, BYA defined the environmental study area, identifying the ordinary high water mark and wetlands as defined by the U.S.A.C.E., if present in the environmental study area and identifying the location of any potential impacts to wetlands or waters of the US. BYA prepared an Environmental Screening Form, which included identifying known NRHP-eligible historic properties within the environmental study area and obtaining an official species list from the U.S.F.W.S. (IPaC) system to identify Federally-listed species potentially present in the environmental study area. BYA provided a Memorandum per site that described the proposed repairs, summarizes potential environmental impacts, provides mitigation recommendations, and support the discussion with the environmental study area figure, Environmental Screening Form, and IPaC official species list. The Memorandum also identified the permit requirements of all State and Local jurisdictions, including required applications, appropriate reference manuals, review processes and timelines.

The second project included the damage evaluation and repairs recommendations of 25 sites in compliance with FHWA and PRHTA. The services provided include site assessments, preliminary engineering reports, environmental documents, construction plans, estimates, and specifications.

The environmental services provided include a environmental review for each site to identify potential impact to the environmental due to the proposed action and the development of environmental documents (CATEX) to document that the proposed projects do not individually or cumulatively have significant adverse effects on the human environment. The CATEX were approved by FHWA. In addition, BYA completed the Explanation of Resiliency Measures to document the implementation of resiliency measures on the project sites being funded by FHWA Emergency Relief funding.

Two specific examples of past deliverables environmental review are the EFLHD/HDR Inc. PR-ST FEMA PR(1)-C1, Eastern part of Puerto Rico and the PRHTA Accelerated Highway Safety Improvement Program. In both projects, after the environmental surveys and assessments, the BYA Team performed environmental reviews to evaluate the potential impact on the environment of the proposed actions.

Other projects where the BYA Team performed environmental assessments are presented in the Company Profile included in Exhibit C.





**ATTACHMENT 1  
SCOPE OF SERVICES**

**Request for Proposals (RFP)**

**Increased Capacity - Environmental Consulting Services  
Community Development Block Grant – Disaster Recovery  
Puerto Rico Department of Housing**

**1. Introduction and Overview**

The Puerto Rico Department of Housing (hereinafter PRDOH) is issuing this Request for Proposals (RFP) increase current capacity for environmental services for the CDBG-DR grant, under the Action Plan and subsequent action plans. It seeks to select additional Environmental Firm(s) that will aid in the PRDOH's objectives of strategic preparation and development of CDBG-DR Home Repair, Reconstruction, or Relocation (R3) Program.

Proposers must understand the CDBG-DR's program initiatives, goals, and regulations, including Federal Register Notices 83 FR 5844 and 83 FR 40314. Proposers must be familiar with the Department of Housing and Urban Development (hereinafter HUD) latest acronyms, glossary, laws, policies, guidelines and design standards applicable to this RFP's Scope of Services. The proposer remains fully responsible for determining if the information mentioned before has been revised or updated.

A detailed description of the CDBG-DR programs is included in the Action Plan approved by the U.S. Housing and Urban Development (HUD) on July 29, 2018. A complete copy of the Action Plan is available at [www.cdbg-dr.pr.gov/action-plan](http://www.cdbg-dr.pr.gov/action-plan).

The scope of services presented is based upon circumstances existing at the time the RFP is released. PRDOH reserves the right to modify or delete the tasks listed and, if appropriate, add additional tasks prior to and during the term of the contemplated contract.

**1.1. CDBG-DR Housing Programs**

PRDOH has structured recovery programs for first-wave implementation that meet the immediate housing needs of the most vulnerable populations on the island by emphasizing housing programs that serve low-to-moderate income households and prioritize elderly persons age 65 and above. Through these programs, home repair and reconstruction will begin in earnest in a way that does not perpetuate building in high risk areas.

A brief description of the CDBG-DR Home Repair, Reconstruction, or Relocation Program and its objectives follows:

Provides funding to repair damaged homes or rebuild substantially damaged homes in place in non-hazard areas. Reconstruction activity returns otherwise displaced families to their homes in their same community. Homes become eligible for reconstruction when the property estimated cost of repair exceeds the lesser of \$60,000 or 50% of the current value (as confirmed through program inspection), or if a feasibility inspection determines that reconstruction is required. Homes that may not be rebuilt in place due to legal, engineering or environmental

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constraints (permitting, extraordinary site conditions, etc.) will not be reconstructed and the homeowner will be provided relocation options. Homes with existing damage equal to or less than the lesser of \$60,000 or 50% of the current value will be rehabilitated to achieve standards and compliance with applicable building codes. For additional details of the Program refer to the Action Plan. The Program has the following objectives:

- + Return displace homeowners
- + Reconstruct housing to higher resilience standard
- + Revitalize weak and aging housing stocks
- + Moving households out of unsafe conditions

2. Staff, Services and Tasks

This section details the environmental tasks that the Selected Proposer must perform in order to support PRDOH in the CDBG-DR Programs, including, but not limited to, the Single-Family Rehabilitation, Reconstruction, or Relocation Program. The Selected Proposer will be directly responsible for ensuring the accuracy, timeliness, and completion of all tasks assigned under this contract. The scope of services presented is based upon circumstances existing at the time the RFP is released. The PRDOH reserves the right to modify or delete the tasks listed and, if appropriate, add additional tasks prior to and during the term of the contemplated contract.

2.1. Staff Requirement

The Proposer shall have or will secure, at its own expense, all personnel required in performing the services under an Environmental Services contract. PRDOH expects the Selected Proposer to provide competent and fully qualified staff that are authorized or permitted under federal, state and local law to perform the scope of work under this contract. The PRDOH reserves the right to request the removal of any staff not performing to standard. No personnel may be assigned to the resulting contract without the written consent of the PRDOH.

2.2. Staff Experience and Qualifications

The Proposer should provide detailed information about the experience and qualifications of key staff, and staff to be assigned, including education, years of experience, licenses, certifications, and résumés or professional information. Proposer shall specifically identify people currently employed by the Proposer who will serve in key roles and positions that it intends to fill in the event of an award. This includes the Proposer's own staff and staff from any subcontractors to be used. The Proposer should demonstrate that its staff (and/or subcontractor's staff) meet the desirable requirements listed below and have necessary experience and knowledge to successfully implement and perform the tasks and services.

| Position        | Qualifications  | Responsibilities  |
|-----------------|---|---|
| Project Manager | + Must have a bachelor's degree or higher education in Engineering, Architecture, Project Management, Science or similar field. | + Routinely interact with clients and will be responsible for cultivating and maintaining strong client relationships. This position involves field work. |
|                 | + Must have at least five (5) years of experience as a project  | + Act as main point of contact for day to day services development and implementation.  |

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| Position                 | Qualifications   | Responsibilities   |
|--------------------------|--|--|
|                          | manager in environmental projects.<br>+ Must have fluent verbal and written communication skills.  | + Support project logistics;<br>+ Conduct research and technical analyses as part of report writing and communication of project results;<br>+ Assist with review and response of RFI's, submittals, change orders and other project forms;<br>+ Coordinate with internal and external team members;<br>+ Communicate project needs to all team members. |
| Environmental Consultant | + Must have a bachelor's degree or higher education in Engineering, Environmental Management, Science or similar field.<br>+ Must have at least five (5) years of experience as Environmental Consultant.<br>+ Must have fluent verbal and written communication skills. | + Conduct research, field surveys and collect data<br>+ Write reports and share findings<br>+ Responsible of the compliance with environmental regulations   |

2.3. Organizational and Staffing Plan

Proposer shall submit to the PRDOH an initial organizational chart detailing the identity of each person (whether employed by Proposer or a subcontractor) who shall perform any Environmental Services required or work on the CDBG-DR Housing Programs. The Proposer's organization and staffing plan shall specifically include the required number of personnel, role and responsibilities of each person on the project, name of the resource or subcontractor, résumé or professional information, their planned level of effort, their anticipated duration of involvement, and their on-site availability. The Proposer should demonstrate their ability to adequately staff and scale each functional area to maintain agreed upon service levels throughout the life of the Program.

The PRDOH reserves the right to request the removal of any staff not performing to standard.

NOTE: FALSE OR MISLEADING STATEMENTS REGARDING STAFF QUALIFICATIONS OR PRIOR PROJECTS WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSER.

3. Environmental Tasks (Tier 2 Site-Specific Environmental Review)

The following tasks shall be performed by the Selected Proposer as part of the environmental services (Tier 2 Site-Specific Environmental Review). See enclosed an example of the Tier II Site-Specific Review for Environmental. **The provided document is not a final version and should not be considered as a formal template of the Tier II Site-Specific Review.**

### 3.1. Task: Environmental Surveys and Assessments

The services required under this task include but are not limited to the completion of environmental site assessments.

- + A field observation will be required on every applicant structure/location to assess the visible aspects of the structure. This includes obtaining a GPS location (to six figures after the decimal point), photographs to assist in defining the structure, a visual determination if there are any potential environmental concerns, and other items of interest. A Field Observation Report will be generated for each visit.
- + Perform hazardous materials environmental site assessments ("ESAs") and prepare hazardous waste remediation plans.
- + Perform a record review to obtain and review records that will help identify recognized environmental conditions in connection with the property.
- + Perform field observations and testing to determine if a project site is contaminated from past or present on-site and/or off-site activities, including, at a minimum, undertaking Phase I consistent with applicable American Society for the Testing of Material protocols.
- + Where contamination is present, identify the appropriate mitigation measure, the contaminant of concern and the location of the contamination.
- + The Selected Proposer is responsible to notify the PRDOH of any other requirement, studies, reviews and/or assessment related to this task.

### 3.2. Task: Environmental Review

The services required under this task include, but are not limited to, initiating meetings with PRDOH staff and any project partners (including Grant Manager, Program Managers, and Construction Managers). For each project, the Selected Proposer will conduct environmental reviews (including required publication of notices) on an as-needed basis in accordance with the required level of clearance. Environmental reviews must, at a minimum, comply with the requirements of the Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56), the National Environmental Policy Act (including implementing regulations at 40 CFR 1500 and 24 CFR 58), the Environmental Public Policy Act of Puerto Rico, as amended (Law Num. 416-2004), and the Puerto Rico Permit Process Reform, as amended (Law Num. 161-2009) along with any other local environmental review requirements. For each project, the Selected Proposer will create an Environmental Review Record ("ERR") meeting the above legal requirements and documenting PRDOH's review and compliance with the related federal authorities listed in 24 CFR 58. This will include structure verification of dates of construction with aerial imagery, and the preparation of brief forms, as needed, by staff meeting the Secretary of Interior's (SOI) Professional Qualifications Standards for Architecture or Architectural History for submission to the State Historic Preservation Office (SHPO) regarding structures 45 years in age or greater that are recommended as not eligible for listing in the National Register of Historic Places.

The Selected Proposer will assess the feasibility of the proposed project in relation to the required level of environmental review and make a recommendation to PRDOH as to the appropriate level of review (e.g. Environmental Impact Statement, Environmental Assessment,

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Categorically Excluded, etc.). The Selected Proposer will be responsible for coordinating with the project sponsor (PRDOH) and the oversight/regulatory agencies to assure permits and/or compliance documentation is obtained for each ERR.

The primary service will be the generation of Tier II Environmental Review Records for the Reconstruction, Repair and Relocation (R3) program. The template for the Tier II Environmental Review Records will be generated from the system of record, Canopy. The Proposers will be expected to use that template (generated from the Tier I documents) for their Tier II reports.

This task requires the Proposer to have the capability to evaluate potential environmental impacts of proposed activities identified in 24 CFR 58.5 and 24 CFR 58.6, and the NEPA requirements at 40 CFR 1500.

The following activities are included in this task, as may be required by PRDOH on a project by-project basis:

- + Maintain contact list of governmental and non-governmental stakeholders.
- + Mail, email and otherwise distribute legal notices to interested stakeholders.
- + Arrange for publication of legal notices in newspapers to reach members of the public likely to have an interest in the proposed project.
- + Assist PRDOH in summarizing comments and preparing responses to comments as necessary.
- + Create and coordinate summary reports to update PRDOH on each project's status and compliance on environmental review requirements.
- + Perform any other duty that relates to 24 CFR Part 58, HUD Environmental Reviews and Puerto Rico's Environmental Laws and regulations [Puerto Rico Environmental Quality Board (JCA for its Spanish Acronym) and Puerto Rico Department of Environmental and Natural Resources (DRNA for its Spanish Acronym)] and other environmental requirements.

### **3.3. Re-evaluate environmental based on a change in the project intent**

The Proposer will review the project intent to make the corresponding adjustments whenever it is determined that the construction work to be carried out is different from the one originally established (i.e. from repair to reconstruction). The project intent is a determination of should the structure be Repaired, Reconstructed, or should be applicant be Relocated.

The services required under this task include, as may be required by PRDOH on a project by-project basis, but are not limited to the following:

- + Meet with PRDOH staff and any project partners (including Grant Manager, Program Managers, and Construction Managers).
- + Review the Environmental Review Record ("ERR").
- + Review the assessment of feasibility of the proposed project in relation to the required level of environmental review and make a recommendation to PRDOH as to the appropriate level of review (e.g. Environmental Impact Statement, Environmental Assessment, Categorically Excluded, etc.).
- + If needed, the Proposer will be responsible for coordinating with the project sponsor and

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the oversight/regulatory agencies to assure permits and/or compliance documentation is obtained for each ERR.

- + Perform any other duty that relates to 24 CFR Part 58, HUD Environmental Reviews and Puerto Rico's Environmental Laws and regulations [Puerto Rico Environmental Quality Board (JCA for its Spanish Acronym) and Puerto Rico Department of Environmental and Natural Resources (DRNA for its Spanish Acronym)] and other environmental requirements.
- + Any other activity needed to accomplish this task.

### **3.4. Specialized Services on as needed basis**

The environmental review process may require the Selected Proposer to sub-contract specialized services. In that event, the Selected Proposer must submit a list of the specialized services to be sub-contracted among those listed below. The information should include a brief information about the services contained within, name of the resource or subcontractor, résumé or professional information and rate per hour or per task, as applicable.

Whenever a specialized service will be used, the Selected Proposer will submit to the PRDOH a Request for Authorization (RFA), which includes the justification and costs for the services to be subcontracted or performed by the Selected Proposer. An allowance will be included in the contract for specialized services on as-needed basis, after the RFA is approved by PRDOH. Since the costs for specialized services will be paid from an allowance, if needed and after approval, the Selected Proposer shall not include any amount for specialized services in its Cost Proposal in response to this RFP.

The following services, but not limited to, are considered specialized (this is not an all-inclusive list):

#### **3.4.1. Wetland Evaluations and Delineations**

When required and for the approval process of the RFA, the proposer must provide information and costs regarding the specialized services that may be included as wetland evaluations and delineations.

#### **3.4.2. Historical and Archaeological Studies**

When required and for the approval process of the RFA, the proposer must provide information and costs regarding the specialized services that may be included as architectural and archaeological studies. Such services may include, but are not limited to, conducting on-site research and preparing detailed forms and mapping that assess the National Register of Historic Places eligibility for both architectural resources and archaeological resource potential, and performing architectural and archaeological surveys necessary to assure PRDOH's compliance with Sections 106 and 110(k) of the National Historic Policy Act and implementing regulations at 36 CFR 800, in compliance with the Programmatic Agreement between PRDOH and SHPO, as needed. The personnel that will be performing the Architectural and Archaeological studies must meet the National Park Service's Secretary of the Interior's (SOI) Professional Qualifications Standards.

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The Architectural Historians and Archaeologists must:

- Must meet the Secretary of Interior (SOI) Professional Qualifications Standards ([https://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](https://www.nps.gov/history/local-law/arch_stnds_9.htm)).
- Architectural Historian and Archaeologist resumes will be submitted to HUD and SHPO for approval prior to authorization to work on the project.

#### **3.4.3. Other Specialized Environmental Services**

When required and for the approval process of the RFA, the Proposer must provide information and costs regarding the specialized services that may be included as other specialized environmental services.

### **4. Key Deliverables**

The key deliverables to be provided include, but are not limited to, the following:

#### **4.1. Environmental Review**

- + The majority of the environmental review work will be completion of Tier II Environmental Review Records. Although as applicable, reviews of Exempt Activity in accordance with 24 CFR 58.34; reviews of Categorical Exclusion in accordance with 24 CFR § 58.35(b); reviews of Compliance with legal authorities in 24 CFR §§ 58.5(a) and 58.6; Environmental Assessments; Tiered Environmental Assessments; EIS Scopes of Work; Environmental Impact Statements; and Tier II checklists must be completed in a format specified by PRDOH. Additionally, there could be re-evaluation work on the Tier II if the project intent changes after the Tier II is approved. Each such deliverable must include a concise rationale documenting environmental findings and supporting the proposed determinations.
- + Perform all services such that it is compatible with the PRDOH system of record, Canopy. The Tier II checklist and other forms are contained within Canopy, which also acts as a workflow system.
- + Proof of publication of all necessary public notices published in the official journal as required by 24 CFR Part 58. This includes proof of Notice of Intent / Request for Release of Funds for each program and assistance in obtaining Authorization to Use Grant Funds from HUD.
- + Assist PRDOH in all matters related to HUD Environmental Review Online System (HEROS). This includes submit, upload and/or post information and/or documentation related to environmental services, if required during the performance of services.

#### **4.2. Environmental Surveys and Assessment**

- + Preparation and submittal of Phase I ESA Reports in accordance with ASTM Standard E 1527-13; preliminary exposure assessments; and a recommended scope of work for a Phase II ESA, when applicable.
- + Any other related deliverable requested and produced in the course of the contract to effectuate the services outlined in the RFP.

Environmental Review Tasks (Tier 2 Site-Specific Environmental Review) deliverables will be furnished within 10 business days of "on-site" completion. Additional time may be awarded to the

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Proposer for complex cases.

Cases outside the Environmental Review Tasks (Tier 2 Site-Specific Environmental Review) will be approved by PRDOH on a case-by case basis under Specialized Services.

5. Term of the Contract

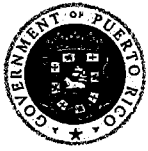
PRDOH aims to select three (3) or more Proposers to provide Increased-Capacity - Environmental Services, at the discretion and in the best interest of the overall program's implementation, under the CDBG-DR grant(s) for a period of three (3) years with optional extensions of up to two (2) additional annual extension. Proposer(s) will be assigned at PRDOH's discretion, with the interest to implement a timely and cost-efficient management structure

END OF SCOPE OF SERVICES

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GOVERNMENT OF PUERTO RICO  
Department of Housing

# Attachment D

February 19, 2021

Ricardo Vázquez Morales, CPA  
Chairman, Bid Board

  
William Ríos Maldonado, Esq.  
Director  
CDBG-DR Procurement Division

Re: Recommendation for Award  
Request for Proposal No. CDBG-DR-RFP 2020-02  
Increased Capacity- Environmental Services  
Community Development Block Grant for Disaster Recovery

On July 17, 2020, the Puerto Rico Department of Housing (PRDOH) issued the Request for Proposal No. CDBG-DR-RFP 2020-02 Increased Capacity for Environmental Services under the Community Development Block Grant - Disaster Recovery (the RFP). This RFP seeks to select three or more firms to provide Environmental Services, that will aid the capacity of the environmental services and respond to the increased demand of services needed to support the Home Repair, Reconstruction, or Relocation Program (R3 program). Services includes environmental site assessments, environmental reviews and reevaluations based on a change in the project intent.

It shall be noted that on September 19, 2018, the PRDOH issued Request for Proposals CDBG-DR-RFP 2018-03 Environmental Consulting Services with CDBG-DR funds. This request was placed through a public notice. Afterwards, the PRDOH requested Proposals from qualified Proposers. Through the procurement process, PRDOH was able to reach two qualified firms; Arcadis Acribe, PSC (Arcadis) and Tetra Tech, Inc. (Tetra). Arcadis and PRDOH executed an Agreement for Environmental Services on July 8, 2019; Contract Number: 2020-DR0001; Tetra Tech and PRDOH executed an Agreement for Environmental Services on August 2, 2019, Contract Number: 2020-DR0010.

During the performance of the contracts, the R3 Program with support of Horne, LLC (the Grant Manager) determined the need to increase the volume of environmental reviews to address the goals of the R3 Program and its participants.

During the queries period of the RFP, a question was submitted regarding the participation of existing environmental consultants in the current RFP. The Procurement Division submitted the following legal issues for an opinion to the CDBG-DR's Legal Division.

606 Barbosa Avenue, Building Juan C. Cordero Dávila, Río Piedras, PR 00918  
P.O. Box 21365 San Juan, PR 00928-1365  
Tel: (787)274-2527 | [www.vivienda.pr.gov](http://www.vivienda.pr.gov)



- May the current entities under contract for environmental services be excluded from participating since the objective of the RFP is precisely to increase the capacity due to the need of additional environmental services?
- Is there an obstacle to excluding the current environmental review contractors, considering, among others, the full and open competition principle?

On July 9, 2020, the Legal Division issued an opinion concluding essentially that to provide full and open competition the RFP shall not exclude contractors or bidders. **(Exhibit A)** Addendum 6 was issued on August 17, 2020, with a revised answer to a question from Jacobs Puerto Rico, Inc., regarding if current Environmental Consultants are precluded from this RFP. PRDOH answered that *"Any person or entity including PMs or CMs that are currently delivering on the R3 Program are allowed to submit a Proposal for this RFP. However, the PRDOH will evaluate any apparent, potential or actual conflicts of interest for any entity that may opt to submit a proposal, according to the applicable rules of conflict of interest for CDBG-DR Program."* **(Exhibit B).**

The Proposers must submit their proposals addressing environmental services considering the following tasks: (a) environmental surveys and assessments, (b) environmental review, and (c) environmental re-evaluation based on a change in the project intent. The PRDOH considered an estimated quantity of 6,000 units for the environmental site assessment and environmental review tasks and assumed that at least 1,500 of the environmental reviews performed will be reevaluated as the construction work to be carried out will differ from the originally established (for example from repair to reconstruction). The environmental review process may require the selected proposer to provide for specialized services on as needed basis. For specialized services, the selected proposer will submit to the PRDOH a Request for Authorization (RFA), which includes the justification and costs for the services to be subcontracted or performed by the selected proposer. An allowance will be included in the contract for specialized services on as-needed basis, after the RFA is approved by PRDOH.

According to the RFP, the term of the contract will be for three years with optional extensions of up to two additional annual extensions. The PRDOH reserved the right, without limitations, to: (i) cancel this solicitation and reissue this RFP or another version of it; (ii) amend the contract(s) of the selected proposer(s) to, among others, extend its original term or to include additional work as related to the programs and services requested herein; and (iii) select three or more qualified proposers and divide estimated quantities of tasks among the different selected proposers.

The contract shall be awarded to the responsible firm(s) whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the PRDOH provided that the price is within the maximum total budgeted amount established for the specific activity.

According to Regulation No. 9075 dated February 26, 2019, the Procurement Manual and Contractual Requirements for CDBG-DR, prior to issuing the RFP, the PRDOH developed an Independent Cost Estimate (ICE) in the amount of \$10,218,750 (**Exhibit I**). On June 8, 2020 the Finance Division certified the availability of funds for the RFP.

A summary of the ICE is included in **Table 1** below:

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| Item Description   | Quantity | Unit Price   | Estimated Cost |
|--|----------|--------------|----------------|
| Services   |          |              |                |
| Environmental Surveys and Assessments & Environmental Review | 6,000    | \$625        | \$3,750,000    |
| Re-evaluation of Project Intent                              | 1,500    | \$312.50     | \$468,750      |
| Sub-Total  |          | \$4,218,750  |                |
| Allowance for Specialized Services                           |          | \$6,000,000  |                |
| Estimated Total Cost   |          | \$10,218,750 |                |

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The RFP set from August 10, 2020, at 8:00am until August 12, 2020, at 4:00pm as the submission date and time for all proposers to submit their proposals. On June 31,2020, the PRDOH issued Addendum No.3 to extend the proposal submission date and time from August 17, 2020, at 8:00am up to August 19, 2020, at 4:00pm. Addendum No.6 dated August 17,2020, extended the proposal submission date and time to August 20,2021, at 4:00pm. The Procurement Division received seven proposals within the Proposals Due Date and Time. **Table 2** illustrate the order, date and time that each proposal was received by the PRDOH.

Table 2: Proposals Submission Register

| Proposer No. | Proposer Name                       | Date of Delivery | Time of Delivery |
|--------------|-------------------------------------|------------------|------------------|
| 1            | Behar Ybarra & Associates LLC       | 8/19/2020        | 1:56pm           |
| 2            | BLN PR                              | 8/20/2020        | 1:24pm           |
| 3            | CIS International LLC               | 8/20/2020        | 3:45pm           |
| 4            | CMA Architects & Engineers LLC      | 8/19/2020        | 1:48pm           |
| 5            | Innovative Emergency Management Inc | 8/20/2020        | 1:08pm           |
| 6            | Jacobs Puerto Rico Inc              | 8/19/2020        | 2:17pm           |
| 7            | Tetra Tech Inc                      | 8/20/2020        | 10:56am          |

In accordance with the terms of the RFP, an Evaluation Committee was appointed to evaluate the Proposals. On August 31, 2020, the Secretary of the PRDOH issued the Administrative Order No. 20-31 to appoint the following members to the Evaluation Committee: Ailyn Rodriguez Del Valle, Chairwoman, Pedro Marrero and Natalia Maldonado Nuñez.

On December 16, 2020, the Evaluation Committee subscribed the Evaluation Committee Report (**Exhibit II**). As the RFP stated, initial evaluation considered the Mandatory Requirements. If the proposer comply with these requirements, then were evaluated for Qualifications and Work Approach Requirements. Once the technical evaluation was completed, by the Evaluation Committee, the Cost Proposal submitted by Qualified proposer(s) were to be evaluated based on the following formula:

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$$\text{Cost Proposal Points} = \frac{\text{Lowest Proposal Cost Received}}{\text{Proposal Cost}} \times [\text{Max. Cost Proposal Points}]$$

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To be consider "Qualified Proposer" their proposals must obtain a score greater or equal to 70 points in the evaluation of Qualification and Work Approach requirements. Finally, the Evaluation Committee will recommend the Qualified Proposers with the proposal, conforming to the RFP, which obtained the Best Value.

**Table 3** below presents the proposals scoring summary that may be awarded to Proposals based on the criteria established in the RFP.

| Table 3: Proposal Scoring Summary of the RFP                  |                   |
|---|-------------------|
| Criteria  | Maximum Points    |
| Mandatory Requirements (Section 6.1)                          | Pass/Fail         |
| Qualifications (Section 6.2)                                  | 50 Points         |
| Work Approach (Section 6.3)                                   | 50 Points         |
| <b>Maximum Technical Points</b>                               | <b>100 Points</b> |
| Cost Proposals (Section 8)                                    | 30 Points         |
| <b>Total Proposal Score</b>                                   | <b>130 Points</b> |
| Preference of 5 points Section 3 Business Concern (Section 7) | 5 Points          |
| Preference of 5 points MWBE (Section 7)                       | 5 Points          |

**Proposals Evaluation**

A summary of the evaluation performed by the Evaluation Committee, including results of Mandatory Requirements, Qualifications and Work Approach (technical points) and Cost Proposal points obtained by the proposers is shown in **Table 4**.

Table 4: Overall Proposals Evaluation Summary

| PROPOSER                             | MAN.<br>REQ.<br>PTS. | QUAL.<br>REQ.<br>PTS. | WORK<br>APP. | SECT.<br>3/MWBE | OVER.<br>TECH | QUALIFIED | OVERALL<br>PROP COST | COST<br>PROPOSAL<br>POINTS | TOTAL<br>POINTS |
|--------------------------------------|----------------------|-----------------------|--------------|-----------------|---------------|-----------|----------------------|----------------------------|-----------------|
| Behar Ybarra & Associates LLC        | PASSED               | 48.7                  | 49.7         | 0               | 98.4          | YES       | \$7,762,500          | 15.2                       | 113.6           |
| BLN PR                               | FAILED               | 0                     | 0            | 0               | 0             | NO        | N/A                  | 0                          | 0               |
| CIS International LLC                | PASSED               | 37.5                  | 11.6         | 0               | 49.1          | NO        | N/A                  | 0                          | 0               |
| CMA Architects & Engineers LLC       | FAILED               | 0                     | 0            | 0               | 0             | NO        | N/A                  | 0                          | 0               |
| Innovative Emergency Management Inc. | PASSED               | 43.7                  | 31.7         | 5               | 80.4          | NO        | N/A                  | 0                          | 0               |
| Jacobs Puerto Rico Inc               | PASSED               | 42.5                  | 50           | 5               | 97.5          | YES       | \$12,195,000         | 9.6                        | 107.1           |
| Tetra Tech Inc                       | PASSED               | 45.6                  | 47           | 10              | 102.6         | YES       | \$3,922,500          | 30                         | 132.6           |

Behar Ybarra & Associates LLC (BYA) passed the mandatory requirements evaluation of this RFP. For the qualifications BYA obtained an average score of 48.7 points. In the work approach requirements the proposer obtained an average score of 49.7. Related to the Section 3/MWBE preference established in Section 7 of the RFP, the Evaluation Committee did not award any additional preference points. This resulted in a total technical score of 98.4. Consequently, BYA was considered Qualified and the Evaluation Committee continued the evaluation of the Cost Proposal.

According to the Evaluation Committee Report, it was requested to BLN PR, to provide documents regarding the mandatory requirements. The information requested was: (i) organizational documents; and (ii) Financial Requirements, including Year-end information. BLN PR failed the Mandatory Requirements. According to the RFP, a total grading of 70% or more was required to obtain a rating of pass in the financial requirements evaluation. The financial consultant, KRESTON PR, LLC performed the evaluation of the financial mandatory requirements section of the RFP based on the information submitted by BLN PR. It was concluded by the financial consultant that BLN PR failed the mandatory financial requirements evaluation after obtaining a **47.67%** from the 70% required<sup>2</sup>. Therefore, BLN PR failed the mandatory requirements evaluation and

<sup>1</sup> IEM should not be considered because of the potential of conflict of interest according to legal opinion subscribed on December 2, 2020. PRDOH and IEM executed a contract on July 15, 2019, to provide Program Management Services (Agreement). IEM evaluates the environmental reports prepared by the subcontractors for the R3 Program. The legal opinion concluded that a potential conflict of interest could arise if IEM is awarded the RFP. The Evaluation Committee understood that the Proposer was not qualified for the services and did not continue with the evaluation of the Cost Proposal.

<sup>2</sup> Refer to letter dated October 19, 2020 signed by Frank Sanchez, from KRESTON, PR LLC.

the Evaluation Committee did not continue to evaluate the qualifications and work approach requirements.

CIS International, LLC (CIS) passed the mandatory requirements evaluation of this RFP. For the qualifications CIS were evaluated and obtained an average score of 37.5 points. In the work approach requirements the proposer obtained an average score of 11.6. Related to the Section 3/MWBE preference established in Section 7 of the RFP, the Evaluation Committee did not award any additional preference points. This resulted in a total technical score of 49.1. To be consider "Qualified Proposer" the proposer must obtain a score greater or equal to 70 points in the evaluation of Qualification and Work Approach requirements. Consequently, CIS International, LLC was not considered Qualified and the Evaluation Committee did not continue the evaluation of the Cost Proposal.

According to the Evaluation Committee Report, it was required to CMA Architects & Engineers, LLC to provide documents regarding the mandatory requirements section of the RFP.

The information requested was: (i) Exhibit A-1(Mandatory Requirement Proposal Checklist); (ii) 6.1.3 Financial Requirements, including Year-end Information, Year to date information and documentation related to the Line of Credit or Cash availability as established in the RFP.

The proposer did not submit any document for this requirement of information. According to the RFP, a total grading of 70% or more was required to obtain a rating of pass in the financial requirements evaluation. The financial consultant, KRESTON PR, LLC performed the evaluation of the financial requirement section of the RFP based on the information submitted by CMA Architects & Engineers, LLC. It was concluded by the financial consultant that CMA Architects & Engineers, LLC failed the mandatory financial requirements evaluation after obtaining a **49.44%** from the 70% required<sup>3</sup>. Therefore, CMA Architects & Engineers, LLC failed the mandatory requirements evaluation and the Evaluation Committee did not continue to evaluate the qualifications and work approach requirements.

Innovative Emergency Management Inc, (IEM) passed the mandatory requirements evaluation of this RFP. For the qualifications IEM obtained an average score of 43.7 points. In the work approach requirements the proposer obtained an average score of 31.7. Related to the Section 3/MWBE preference points, the Evaluation Committee awarded five points. This resulted in a total technical score of 80.4. During the evaluation of the cost proposal, the Evaluation Committee requested the Procurement Division to consult with the Legal Division about a potential conflict of interest taking into consideration the services included in the RFP and that IEM is one of the program managers for the R3 Program. According to the legal opinion dated December 2, 2020, a potential conflict

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<sup>3</sup> Refer to letter dated October 19, 2020 signed by Frank Sanchez, from KRESTON, PR LLC.

of interest could arise if IEM is awarded the RFP. As stated in the legal opinion, [...] the fact that if IEM is awarded the RFP, it will be in a position to review the environmental evaluations, but it will also be able to execute the same if it deems it necessary, creates, without a doubt, a possible conflict of interest or at least the appearance of one. Therefore, in abundance of caution, our position is that IEM's proposal should not be considered by the Program. As a result, the Evaluation Committee disqualified IEM and did not continue with the evaluation of the Cost Proposal. As stated in the Evaluation Committee report: *Given the evaluation of technical aspects of the Proposal, as submitted and as it may have been supplemented through requests for clarifications or additional information from the Evaluation Committee, Innovative Emergency Management Inc is considered to be Not qualified for the services requested. Innovative Emergency Management Inc's Proposal obtained a total technical score of 80.4 points, nevertheless, due to the possible conflict of interest, it was disqualified based on the legal opinion received and previously set forth.*

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Jacobs Puerto Rico Inc (Jacobs) passed the mandatory requirements evaluation of this RFP. For the qualifications Jacobs obtained an average score of 42.5 points. In the work approach requirements the proposer obtained an average score of 50 points. Related to the Section 3/MWBE preference, the Evaluation Committee awarded five 5 points for MWBE preference. This resulted in a total technical score of 97.5. Consequently, Jacobs Puerto Rico was considered Qualified and the Evaluation Committee continued the evaluation of the Cost Proposal.

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Tetra Tech Inc, (Tetra) passed the mandatory requirements evaluation of this RFP. For the qualifications Tetra obtained an average score of 45.6 points. In the work approach requirements the proposer obtained an average score of 47 points. Related to the Section 3/MWBE preference, the Evaluation Committee awarded ten additional preference points after evaluating documentation submitted by the proposer in compliance with Section 7 of the RFP. This resulted in a total technical score of 102.6. Consequently, Tetra was considered Qualified and the Evaluation Committee continued the evaluation of the Cost Proposal.

According to Section 9.3 of the RFP, once the technical evaluation of the proposal was completed, the Evaluation Committee evaluated the Cost Proposals submitted by all three Qualified Proposers Behar Ybarra & Associates, Tetra Tech, Inc. & Jacobs PR Inc. using the formula below:

$$\text{Cost Proposal Points} = \frac{\text{Lowest Proposal Cost Received}}{\text{Proposal Cost}} \times [\text{Max. Cost Proposal Points}]$$

Subsequently, the Evaluation Committee combined the technical evaluation (Qualifications and Work Approach) and economic results to recommend which Proposer(s), conforming to the RFP represented the Best Value.

**Tables 5, 6 and 7** summarizes the Qualified Proposers **Behar Ybarra & Associates LLC, Tetra**

Tech Inc. & Jacobs PR Inc. evaluation results using the formula for the Cost Proposals ant the Total Proposal Score.

Table 5: Summary of Proposal Evaluation for Behar Ybarra & Associates LLC

| Criteria  | Maximum Points |
|---|----------------|
| Mandatory Requirements (Section 6.1)                          | Pass/Fail      |
| Qualifications (Section 6.2)                                  | 48.7 Points    |
| Work Approach (Section 6.3)                                   | 49.7 Points    |
| Preference of 5 points Section 3 Business Concern (Section 7) | 0 Points       |
| Preference of 5 points MWBE (Section 7)                       | 0 Points       |
| Technical Points  | 98.4 Points    |
| Cost Proposals (Section 8)                                    | 15.2 Points    |
| Total Proposal Score  | 113.6 Points   |

Table 6: Summary of Proposal Evaluation for Tetra Tech

| Criteria  | Maximum Points |
|---|----------------|
| Mandatory Requirements (Section 6.1)                          | Pass/Fail      |
| Qualifications (Section 6.2)                                  | 45.6 Points    |
| Work Approach (Section 6.3)                                   | 47 Points      |
| Preference of 5 points Section 3 Business Concern (Section 7) | 5 Points       |
| Preference of 5 points MWBE (Section 7)                       | 5 Points       |
| Technical Points  | 102.6 Points   |
| Cost Proposals (Section 8)                                    | 30 Points      |
| Total Proposal Score  | 132.6 Points   |

Table 7: Summary of Proposal Evaluation for Jacobs PR Inc.

| Criteria  | Maximum Points |
|---|----------------|
| Mandatory Requirements (Section 6.1)                          | Pass/Fail      |
| Qualifications (Section 6.2)                                  | 42.5 Points    |
| Work Approach (Section 6.3)                                   | 50 Points      |
| Preference of 5 points Section 3 Business Concern (Section 7) | 0 Points       |
| Preference of 5 points MWBE (Section 7)                       | 5 Points       |
| Technical Points  | 97.5 Points    |
| Cost Proposals (Section 8)                                    | 9.6 Points     |
| Total Proposal Score  | 107.1 Points   |

The Evaluation Committee recommended negotiations with the three qualified proposers, Behar Ybarra & Associates, Tetra Tech Inc. and Jacobs PR Inc. with the intent of allowing proposers to revise their Cost Proposals, in order to maximize the PRDOH availability to obtain the best possible offer, based on the requirements of the RFP. On December 16, 2020, the Procurement Division notified former Secretary Luis C. Fernandez Trinchet Esq., CFA about the recommendation to negotiate with Qualified Proposers. On December 16, 2020, Secretary Fernández Trinchet authorized to conduct and coordinate the negotiations in accordance with Regulation No. 9075.

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On December 23, 2020, the Procurement Division and the Programmatic Area joined during clarifications meetings in which the Proposer had the opportunity to explain how the tasks will be provided in accordance with the scope of the RFP. During the meetings, the Procurement Division provided with some clarifications regarding proposers assumptions for the environmental services, including that:

- No minimum quantity of environmental reviews/ reevaluation of project intent is being guarantee by PRDOH;
- The Proposer should expect to have staff located in Puerto Rico to attend Program needs and meetings as needed;
- System integration is not allowed at this time;
- Environmental reports are to be submitted, reviewed, and approved in the PRDOH system of record (Canopy); and
- Proposer may need to go to the State Historic Preservation Office (SHPO) to conduct research, as not all required information may be available online.

After clarifications meetings were conducted, the Programmatic Area understood the following clarifications were necessary:

1. All work outside of the standard desktop review for the Tier 2 (with the exception of the initial site visit) that requires additional visitation to the site or agency coordination (meetings) will be performed as part of specialized services. PRDOH will perform submittal and coordination with the SHPO – all required documentation for SHPO will be presented to the PRDOH.
2. *Process Flow*
  - Assignments will be provided to the Environmental Consultant (EC) via Canopy. All information required to complete the Tier 2 (aside from the EC's site visit) will be included in Canopy. The EC can use an internal process flow for creation of the Tier 2, if desired. If an internal system is used, a .pdf of the Tier 2 and any supporting documents must be uploaded to Canopy.
3. *Site Visits*
  - Applications will likely be geographically located such that excessive travel is not required.
  - For the Tier 2 work, only one site visit will be needed. Any additional site visits, if required due to services outside of the normal Tier 2 data gathering, would be performed as a Specialized Service as part of the Request for Authorization (RFA) process.
  - The site visit shall consist of the following:
    - o Completion of a Field Observation Form for inclusion into the Tier 2
    - o Eight photographs associated with the structure (front, left side, right side, rear, front side facing away, rear side facing away, left side facing away,

and right side facing away). The photographs should be such that the ground surrounding the structure is shown (if possible). Additional photographs of the house will likely be available in the Damage Assessment (which will be provided).

- Photographs of any environmental issues associated with the property surrounding the structure (streams, environmental concerns [stained soil, etc.], wetlands, etc.)
- Latitude and Longitude of the structure to six digits (xx.xxxxxx, xx.xxxxxx)
- The Field Observation Form can be any used by the EC but is not expected to be a report (not more than two to three pages not including photographs). A field observation form is available if the EC does not have one.

#### 4. Tier 2 Environmental Review Record

For the Tier 2s, a Level of Review Determination is not required. All Tier 2 reviews are Tiered Environmental Assessments. After contract agreement, the Tier 1 documents can be provided to the EC with the latest electronic template of the Tier 2. Canopy will have all information needed for completion of the Tier 2 except for that developed by the EC.

- Project intent is either developed by Canopy or the Program Manager. The EC is not required to develop Project Intent.
- The Tier 2 is available through Canopy.
- The Tier 2 template is a pick-list template with pre-developed language that can be chosen as being developed.
- The Tier 2 cannot be altered without written approval from the PRDOH.
- The Tier 2 ERR can be developed off-system based upon the desires of the EC. The option also exists to develop the ERR in-system also. The needed documents (including the Tier 2 ERR) will have to be uploaded to Canopy to complete the process.
- Portions of Canopy (flood zone, year built) will require updating by the EC
- The Tier 2 ERR will be reviewed by the PRDOH and either approved or returned for corrections.
- SHPO determinations for the Tier 2 may be approved by a Program Allowance or a SHPO Short Form which is a part of the Tier 2 requirements. Any additional work such as preparation of the SHPO Long Forms will be a part of Specialized Services.

#### 5. Re-evaluations

The Tier 2 re-evaluations will only be for Project Intents that were originally Repair that are changing to Reconstruction. Reconstruction Tier 2s to be changed to Repair Tier 2s do not require a re-evaluation. The Program Managers will initiate the Re-evaluation process through Canopy.

- A site visit for the re-evaluation is not required.
- A new Tier 2 for the re-evaluation is not required.

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- The re-evaluation will consist of a one-page form that is available on Canopy. Additionally, any environmental topics originally not addressed in the original Tier 2, i.e., wetlands, farmlands, cultural resources, endangered species) may require to be addressed in the re-evaluation.
- The re-evaluation is intended to use the existing Tier 2 report as much as possible to reduce costs of preparation of new information.
- The re-evaluation report will be uploaded (as well as any supporting documentation) to Canopy.

#### 6. Mitigation Requirements

All required mitigation items will be included in the Tier 2. The Tier 2 has a check box list for all normal mitigation requirements as well as an "other" box for unusual mitigation requirements.

#### 7. Approvals

All approval by the Certifying Officer is accomplished through Canopy and no actions by the EC is necessary.

On January 4, 2021, the Procurement Division sent a letter to Behar Ybarra & Associates, Tetra Tech, Inc. & Jacobs PR Inc to request to revise their Cost Proposals. The revised Cost Proposals due date was set for January 11, 2020, and would be considered the Proposers best and final offer (BAFO). The proposers were notified about Programmatic Area recommended clarifications and that the prices submitted were considered by the PRDOH to be either too high, too low or within range. The due date to submit the revised cost proposals was set for January 11, 2021.

All Proposers submitted their best and final offers (BAFO):

- Behar Ybarra & Associates (**Exhibit III**)
- Jacobs PR Inc. (**Exhibit IV**)
- Tetra Tech Inc. (**Exhibit V**)

Pursuant to the Section 9.5 of the RFP, the award shall be based on a Best Value recommendation by the Evaluation Committee. The terms and conditions of the RFP also established that the award will only be issued at a reasonable cost to the PRDOH. A comparison of the revised cost proposals received in response to the BAFO request was made in order to establish price reasonableness. After the qualified proposers submitted their BAFO, each proposer's cost proposal points were revised in order to obtain the total proposal points.

**Table 8** summarizes evaluation results after BAFO:

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Table 8: Evaluation results after revised Cost Proposals for Increased Capacity-Environmental Services

| PROPOSER                      | MAN. REQ. PTS. | TOTAL POINTS | QUALIFIED | REVISED COST PROPOSAL     | COST PROPOSAL POINTS | TOTAL PROPOSAL POINTS |
|-------------------------------|----------------|--------------|-----------|---------------------------|----------------------|-----------------------|
| BEHAR YBARRA & ASSOCIATES LLC | PASS           | 98.4         | YES       | \$4,825,875 <sup>4</sup>  | 22.3                 | 120.7                 |
| TETRA TECH INC.               | PASS           | 102.6        | YES       | \$3,592,500 <sup>5</sup>  | 30                   | 132.6                 |
| JACOBS PR INC.                | PASS           | 97.5         | YES       | \$10,807,500 <sup>6</sup> | 9.9                  | 107.4                 |

As illustrated in **Table 8**, after corresponding negotiations by the Procurement Division, Tetra Tech, Inc. achieved the highest total proposal score of 132.6 points, followed by BYA with 120.7 points and Jacobs with 107.4 points. A determination of the reasonableness of the price must be made to guarantee that the award will only be issued at a reasonable cost to the PRDOH. The Procurement Division compared the unit price per Task from BYA, Tetra and Jacobs. The following tables present a summary of unit price per Task, as submitted in the BAFO compared to the average of the unit price among the proposals. This average cost excludes the unit price per task submitted by Jacobs, the highest revised cost proposal. In addition, the Procurement Division reviewed the CDBG-DR's Environmental Consulting Services Contract number 2020-DR0001, from Arcadis Caribe, PSC, and compared contract prices for Site-Specific Tier 2 Environmental Review. **Table 9,10,11** show the comparison results.

Table 9: Behar Ybarra & Associates LLC BAFO

| Task Description   | BAFO Jan. 11, 2021 | BAFO Average w/o Jacobs | %Diff. BAFO vs Average | Arcadis Contract (2020-DR0001) | %Diff. BAFO vs Arcadis Contract |
|--|--------------------|-------------------------|------------------------|--------------------------------|---------------------------------|
| Environmental Surveys and Assessments & Environmental Review (Tier 2 Site Specific Environmental Review) (6) | \$715.50           | \$622.75                | 14.89%                 | \$625                          | 14.48%                          |
| Re-evaluation of Project Intent  | \$355.25           | \$315.13                | 12.73%                 | N/A                            | N/A                             |

<sup>4</sup> This amount represents the subtotal cost in the BYA BAFO dates January 11, 2021.  
<sup>5</sup> This amount represents the subtotal cost in the Tetra Tech BAFO dates January 11, 2021.  
<sup>6</sup> This amount represents the subtotal cost in the Jacobs PR BAFO dates January 11, 2021.

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Table 10: Tetra Tech Inc, BAFO

| Task Description:  | BAFO<br>Jan. 1/1/ 2021 | BAFO<br>Average<br>wo/<br>Jacobs | %Diff. BAFO vs<br>Average | Arcadis<br>Contract<br>(2020-<br>DR0001) | %Diff<br>BAFO vs<br>Arcadis<br>Contract |
|--|------------------------|----------------------------------|---------------------------|--|---|
| Environmental Surveys and Assessments & Environmental Review (Tier 2 Site Specific Environmental Review) (6) | \$530                  | \$622.75 <sup>7</sup>            | -14.89%                   | \$625.00                                 | -15.20%                                 |
| Re-evaluation of Project Intent  | \$275                  | \$315.13                         | -12.73%                   | N/A                                      | N/A                                     |

Table 11: Jacobs PR Inc, BAFO

| Task Description:  | BAFO<br>Jan. 1/1/ 2021 | BAFO<br>Average<br>wo/<br>Jacobs | %Diff. BAFO vs<br>Average | Arcadis<br>Contract<br>(2020-<br>DR0001) | %Diff<br>BAFO vs<br>Arcadis<br>Contract |
|--|------------------------|----------------------------------|---------------------------|--|---|
| Environmental Surveys and Assessments & Environmental Review (Tier 2 Site Specific Environmental Review) (6) | \$1,495                | \$622.75                         | 140.95%                   | \$625.00                                 | 139.20%                                 |
| Re-evaluation of Project Intent  | \$1,225                | \$315.13                         | 288.73%                   | N/A                                      | N/A                                     |

As shown in the previous tables, compared to **BYA** and **Tetra**, **Jacobs** cost proposal is unreasonable even after taking under consideration variables such as contracts of similar scope and scale. In regards to BYA and Tetra the Procurement Division understand that the unit prices proposed for the services are considered reasonable after the comparison.

Recommendation to contract:

The PRDOH reserved the right to contract three or more qualified proposers and divide estimated quantities of tasks among the different selected proposers for Increased Capacity Environmental Services as result of the selection of qualified Proposers. The award (or awards in case of multiple awards) shall be made to the responsible firm(s) whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the PRDOH provided that the cost or price is reasonable for the services. Pursuant to the terms of the RFP and the Evaluation Committee recommendation, we recommend that awards be issued to Behar Ybarra &

<sup>7</sup> Tetra Tech Inc. and PRDOH executed the Contract No. 2020-DR0010 for which the contractor invoice the PRDOH \$465 for Site Specific Tier 2 Environmental Review task which includes the environmental inspection. When compared with the original contract, Tetra pricing for site specific tier 2 is higher than the preexisting contract. Tetra explained during the clarification meeting that under the original contract they have the ability to reduce mobilization costs by mobilizing and accomplishing multiple line items (for example lead and asbestos inspection) at one time. Based on their explanation, on this contract, lead and asbestos inspection does not occur, so that economy of scale translates just to a single item to deliver site Tier 2 environmental inspection.

Associates LLC and Tetra Tech Inc. two responsible firms<sup>8</sup>, who obtained the highest proposal score after the evaluation of the technical requirements and cost proposal points and which prices are reasonable for the services when compared among the unit prices submitted by the qualified proposers and contracts of similar scale and scope.

Distribution of funds:

According to the RFP requirements, the Procurement Division recommends in consultation with the Programmatic Area a contract to **Tetra Tech Inc. for the total amount of \$4,796,250 and a three year term with two optional extensions of one year** distribute as shown in **Table 12**. We also recommend that such award be made for a quantity of 3,000 units for Environmental Surveys and Assessment and 750 units for the Re-evaluation of Project Intent.

Table 12: Distribution to Tetra Tech Inc.

|   |       |          |             |
|---|-------|----------|-------------|
| Environmental Surveys and Assessments & | 3,000 | \$530    | \$1,590,000 |
| Environmental Review                    |       |          |             |
| Re-evaluation of Project Intent         | 750   | \$275.00 | \$206,250   |
| Sub-Total                               |       |          | \$1,796,250 |
| Allowance for Specialized Services      |       |          | \$3,000,000 |
| Total                                   |       |          | \$4,796,250 |

A contract to **Behar Ybarra & Associates LLC for the total amount of \$5,412,938 and a three year term** with two optional extensions of one year distribute as shown in **Table 13**. We recommend that such award be made for a quantity of 3,000 units for Environmental Surveys and Assessment and 750 units for the Re-evaluation of Project Intent:

|   |       |          |              |
|---|-------|----------|--------------|
| Environmental Surveys and Assessments & | 3,000 | \$715.50 | \$2,146,500  |
| Environmental Review                    |       |          |              |
| Re-evaluation of Project Intent         | 750   | \$355.25 | \$266,437.50 |
| Sub-Total                               |       |          | \$2,412,938  |
| Allowance for Specialized Services      |       |          | \$3,000,000  |
| Total                                   |       |          | \$5,412,938  |

Should you have any questions, please contact us at [wrios@vivienda.pr.gov](mailto:wrios@vivienda.pr.gov).

<sup>8</sup> The Procurement Division searched SAM to verify proposers eligibility and LDP to confirm that they are not under HUD limited denial of participation. Copies are included in the Procurement File.

# Attachment E

## PERFORMANCE REQUIREMENTS

Performance requirements included herein will apply to the contractor and any subcontractor, according to the contract.

### Task Assignments

The contractor shall provide Environmental Services in accordance to the Scope of Services to Support PRDOH. The contractor will be directly responsible for ensuring the accuracy, timeliness, and completeness of all tasks assigned under contract. The contract will be based on specific task orders requested by PRDOH. The information listed in Sections 3 and 4 of the Scope of Services serves as a guide of potential tasks, and deliverables that might be requested by PRDOH and expected from the contractor.

The due date for the completion of each task will depend on its nature. On a regular basis, the due date for completion and delivery of the tasks included in the Scope of Services will be based upon the following timeframes:

- Environmental Surveys and Assessments:
  - Within **ten (10) business days** of “on-site” completion, and **five (5) business days** after a revision of the draft is requested
- Environmental Review:
  - Within **ten (10) business days** of “on-site” completion, and **five (5) business days** after a revision of the draft is requested
- Re-evaluate environmental review based on a change in the project intent:
  - **Three (3) business days** after the task is requested, and **one (1) business day** after a revision of the draft is requested
- Specialized Environmental Services:
  - Will be on a case-by-case basis and with prior approval from PRDOH.

PRDOH's Programmatic Areas require tasks to be performed in the following manner:

- Tier-II checklists must be completed using a template that will be specified and provided by PRDOH.
- Each deliverable must include a concise rationale documenting environmental findings and supporting the proposed determinations.
- Perform all services in a manner that it is compatible with the PRDOH system of record, Canopy. The Tier-II checklist and other forms are contained within Canopy, which also acts as a workflow system.

### Staff Requirements and Task Performance

The contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The contractor must provide competent and fully qualified staff that are authorized or permitted under federal, state and local law to perform the scope of services under this contract. PRDOH reserves the right to request the removal of

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any staff not performing to standards. No personnel may be added to the resulting contract without the written consent of PRDOH.

### **Liquidated Damages**

In the event that the contractor is determined to have engaged in any proscribed conduct or otherwise is in default as to any applicable term, condition, or requirement of the contract, PRDOH may impose sanctions against the contractor. The contractor shall pay to PRDOH as liquidated damages, \$100 for each calendar day that a required deliverable is late, until deemed in compliance, subject to a maximum of \$1,000. Said sum, in view of the difficulty of accurately ascertaining the loss which PRDOH will suffer by reason of delay in the completion of the work herein requested, is hereby fixed and agreed upon as the liquidated damages that PRDOH will suffer by reason of such delay. Liquidated damages received are not intended to be nor shall they be treated as either a partial or full waiver or discharge of PRDOH's right to indemnification, or the contractor's obligation to indemnify PRDOH, or to any other remedy provided for as a provision of the contract or law. Liquidated damages may be assessed at the sole discretion of PRDOH. For the purpose of applying and calculating such liquidated damages, a grace period of ten (10) days shall be observed. PRDOH may deduct and retain out of the monies which may become due to the contractor, the amount of any such liquidated damages; and in case the amount which may become due is less than the amount of liquidated damages due to PRDOH, the contractor shall be liable to pay the difference.

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OSPA  
Request for Proposals  
Increased Capacity - Environmental Consulting Services  
Community Development Block Grant – Disaster Recovery  
Puerto Rico Department of Housing  
Secretary for Legal Affairs  
Insurance Section

SPECIAL INSURANCE AND BONDING SPECIFICATIONS  
FOR PROFESSIONAL SERVICES

A. The successful bidder before commencing work or receiving a written notice to proceed with, or being allowed to start to work, must submit to the **Department of Housing**, two (2) certified copies of the hereafter mentioned insurance policies and/or bonds, thus including all endorsements and agreements required under the special contractual conditions as per the following:

(X) 1. State Insurance Fund Workmen’s Compensation Insurance Policy

In accordance with the Workmen’s Compensation Act No. 45, to facilitate its acquisition, the **Department of Housing** shall provide a letter to the successful bidder addressed to the State Insurance Fund.

(X) 2. Commercial General Liability (Broad Form) including the following insurance coverage

| COVERAGE  | LIMIT                            |
|---|----------------------------------|
| I. Commercial General Liability:                              | \$1,000,000.00                   |
| • General Aggregate   | \$2,000,000.00                   |
| • Products & Complete Operations                              | \$1,000,000.00                   |
| • Personal Injury & Advertising                               | \$1,000,000.00                   |
| • Each Occurrence   | \$1,000,000.00                   |
| • Fire Damage   | \$100,000.00 (Any one Fire)      |
| • Medical Expense   | \$10,000.00 (Any one person)     |
| II. Employer’s Liability Stop Gap:                            |                                  |
| • Bodily Injury by Accident<br>Each Employee<br>Each Accident | \$1,000,000.00<br>\$1,000,000.00 |
| • Bodily Injury by Disease<br>Each Employee<br>Each Accident  | \$1,000,000.00<br>\$1,000,000.00 |

(X) **3. Comprehensive Automobile Liability Form including the following insurance coverages**

| LIMIT   |                |
|---|----------------|
| • Auto Liability -  | \$1,000,000.00 |
| • Physical Damages -  | \$1,000,000.00 |
| • Medical Payments -  | \$10,000.00    |
| The Commercial Auto cover must be applied to the following symbols: |                |
| • Liability Coverage -1   |                |
| • Physical Damages – 2 and 8  |                |
| • Hired – Borrowed Auto - 8   |                |
| • Non-Owned Auto Liability - 9                                      |                |

(X) **4. Professional General Liability and/or Errors and Omissions Policy**

(X) **A. Risk, interest, location and limits**

(X) **A.1 Description of work to be done**

(X) **A.2 Limit:**

|                     |             |
|---------------------|-------------|
| (X) each occurrence | \$1,000,000 |
| (X) aggregate       | \$5,000,000 |
| (X) deductible      | \$5,000.00  |

(X) **A.3** Certification that the insurance contract has been given as surplus lines coverage under the Commonwealth Insurance Code, when applicable.

(X) **5. Umbrella**

Limit - \$2,000,000.00

(X) **6. The policies to be obtained must contain the following endorsements including as additional insured *the Department of Housing, U.S. Department of Housing and Urban Development (HUD), and the Government of Puerto Rico.***

- (X) **a. Breach of Warranty**
- (X) **b. Waiver and / or Release of Subrogation**
- (X) **c. Additional Insured Clause**
- (X) **d. Hold Harmless Agreement**
- (X) **e. 30 Days Cancellation Clause**

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- (X) 7. The insurance carrier or carriers which will present said certificates of insurance must have at least a B+ rating according to the Best Rating Guide.

**B. IMPORTANT NOTICE TO INSURANCE AND SURETY COMPANIES AND THEIR REPRESENTATIVES**

All insurance companies and all guarantors who issue policies or bonds under our special contractual conditions are subject to:

1. Be authorized to do business within the Commonwealth of Puerto Rico and have the corresponding license issued by the Commissioner of Insurance.
2. To be enjoying a good economic situation and to be classified under the Category of B+ by the "Best Rating Guide".
3. Submit to the **Department of Housing**, a written certification as evidence of full payment of premiums by the Contractor. Mention each risk coverage premium separately.
4. Avoid sub-contractual obligations of premium financing or any other kind, which may be detrimental to the public interest.
5. Avoid any request for cancellation by the contractor prior to the expiration date of the policy, without the consent of the Insurance Section of the **Department of Housing**. Discuss any refund of unearned premium.
6. Follow all Federal Bail and Acceptance Insurance Regulations, when applicable.
7. Indicate in the appropriate place of all insurance policies and/or bonds, the full description of the project, work or service to be rendered.
8. Not to make any amendments to insurance policies and bonds issued under the special conditions mentioned above, unless approved by the Insurance Section of the Department of Housing.
9. To ensure that all insurance policies or bonds are issued to comply with all of our special insurance conditions with respect to the period of coverage, type of risk coverage, as well as all limits, as specified, and also to eliminate those exclusions in accordance with our request.
10. Clarify any questions regarding insurance requirements by any means of communication with the Insurance Section Insurance Section of the **Department of Housing** under the Secretary for Legal Affairs.

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**C. EVIDENCE OF INSURANCE COVERAGE OF EACH SUBCONTRACTOR TO BE SUBMITTED BY THE SUCCESSFUL BIDDER AS THE PRIME CONTRACTOR:**

The successful bidder, as the prime contractor, has the duty to require each of the subcontractors or subcontractors to maintain in force all insurance policies and/or bonds necessary to cover their individual participation in the risk or risks related to the subcontracted work or service to be rendered.

Therefore, we emphasize that prior to commencing work or receiving written notice to proceed with such work or being authorized to commence work, the successful prime contractor has the responsibility to provide the **Department of Housing** with evidence to the effect that all insurance and/or bonds required under the special conditions or required under the sub-contract to each of the sub-contractors or sub-sub-contractors are current and duly approved by the Insurance Section of the **Department of Housing**.

All insurance policies shall remain in effect for the entire contractual period, so that with any order of change and/or amendment resulting in alteration of the original project completion date or total original cost, the prime contractor shall take the necessary steps to request the insurer to include such changes in all related insurance policies and/or bonds and to submit evidence by appropriate endorsements with effective dates. Cancellations without consent are not accepted.

The **Department of Housing** reserves the right to stop any work or service under contract until the breach of these requirements has been remedied, so that any delay in the performance of the contract based on any breach of the insurance coverage requirements shall be deemed the sole responsibility of the Main Contractor.

**D. CONFLICT OR DIFFERENCE BETWEEN THE SPECIFICATIONS OF THE TENDERING PROCEDURE AND SPECIAL INSURANCE CONDITIONS AND BONDS, FORM-OSPA-78-5**

In the event of any conflict or difference in the description of coverage or in amounts or limits, etc., with respect to insurance requirements, the "Special Conditions of Insurance and Bonds" as set forth in this **Form-OSPA-78-5** shall prevail over any other insurance specifications.

**E. CERTIFICATE OF INSURANCE SECTION**

We hereby certify, to our best knowledge and understanding, that we have prepared the aforementioned "Insurance and Bonds Special Conditions" after a proper evaluation of the related risks, based on the information of the nature of the project

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and description submitted to us, as requested by the Contracting Program through a written application.

**DESCRIPTION OF THE SERVICES:**  
**Increased Capacity - Environmental Consulting Services**

May 29, 2020  
Date

Arlyn Rodriguez Fuentes  
Arlyn Rodriguez Fuentes  
Insurance Section  
Secretary for Legal Affairs

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## HUD GENERAL PROVISIONS

Given that the Contract involves funds for which the U.S. Department of Housing and Urban Development (**HUD**) is the oversight agency, the following terms and conditions may apply to this Contract. In addition, Contractor shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <https://www.hudexchange.info/resource/2490/hud-form-4010-federal-labor-standards-provisions/>

The CONTRACTOR shall include these terms and conditions in all subcontracts or purchase orders directly servicing the Contract.

These general provisions may be updated from time to time. It is the sole responsibility of the CONTRACTOR to be aware of any changes hereto, to amend and implement such changes and to ensure subcontracts terms and conditions are modified as necessary, if any.

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### General Provisions:

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#### 1. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law 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, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

#### 2. STATUTORY AND REGULATORY COMPLIANCE

CONTRACTOR shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by: the Continuing Appropriations Act, 2018, and Supplemental Appropriations for Disaster Relief Requirements, 2017 (**Pub. L. 115-56**) approved on September 8, 2017, as amended; the Bipartisan Budget Act of 2018 (**Pub. L. 115-123**) approved on February 9, 2018, as amended; the Additional Supplemental Appropriations for Disaster Relief Act, 2019, (**Pub. L. 116-20**) approved on June 6, 2019, as amended; as well as including, but not limited to, the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including if certain expenses are allowed.

#### 3. BREACH OF CONTRACT TERMS

The Puerto Rico Department of Housing (**PRDOH**) reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of

this Contract, in instances where the CONTRACTOR or any of its subcontractors violate or breach any Contract term. If the CONTRACTOR or any of its subcontractors violate or breach any Contract term, they shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the Contract documents, and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

#### **4. REPORTING REQUIREMENTS**

The CONTRACTOR shall complete and submit all reports, in such form and according to such schedule, as may be required by PRDOH and/or the Government of Puerto Rico. The CONTRACTOR shall cooperate with all the PRDOH and/or the Government of Puerto Rico efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and § 570.507, when applicable.

#### **5. ACCESS TO RECORDS**

The Government of Puerto Rico, the PRDOH, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the CONTRACTOR which are related to this Contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

#### **6. MAINTENANCE/RETENTION OF RECORDS**

All records (files, data, work product) connected with this Contract will be turned over to PRDOH following the Agreement termination to be maintained for the remainder of the grant and post grant closeout.

#### **7. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

The CONTRACTOR will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include, but are not limited to:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

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- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

Additionally, for contracts of **\$10,000 or more**, the CONTRACTOR shall file Form HUD 2516 (Contract and Subcontract Activity) with the PRDOH on a quarterly basis.

#### **8. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

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

#### **9. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

The Proposer will comply with the provisions of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives Federal funds or other Federal financial assistance. Programs that receive Federal funds cannot distinguish among individuals on the basis of race, color or national origin, either directly or indirectly, in the types, quantity, quality or timelines of program services, aids or benefits that they provide or the manner in which they provide them. This prohibition applies to intentional discrimination as well as to procedures, criteria or methods of administration that appear neutral but have a discriminatory effect on individuals because of their race, color, or national origin. Policies and practices that have such an effect must be eliminated unless a recipient can show that they were necessary to achieve a legitimate nondiscriminatory objective.

#### **10. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

The CONTRACTOR shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, religion or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with

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respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

**11. SECTION 504 OF THE REHABILITATION ACT OF 1973**

The CONTRACTOR shall comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as amended, and any applicable regulations.

The CONTRACTOR agrees that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

**12. AGE DISCRIMINATION ACT OF 1975**

The CONTRACTOR shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), as amended, and any applicable regulations. 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.

**13. DEBARMENT, SUSPENSION, AND INELIGIBILITY**

The CONTRACTOR represents and warrants that it and its subcontractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. Part 2424.

**14. CONFLICTS OF INTEREST**

The CONTRACTOR shall notify the PRDOH as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as defined at 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 or 84.42, if applicable). The CONTRACTOR shall explain the actual or potential conflict in writing in sufficient detail so that the PRDOH is able to assess such actual or potential conflict. The CONTRACTOR shall provide the PRDOH any additional information necessary to fully assess and address such actual or potential conflict of interest. The CONTRACTOR shall accept any reasonable conflict mitigation strategy employed by the PRDOH, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict.

**15. SUBCONTRACTING**

When subcontracting, the CONTRACTOR shall solicit for and contract with such subcontractors in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

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- (i) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (ii) Requiring unnecessary experience and excessive bonding;
- (iii) Noncompetitive pricing practices between firms or between affiliated Companies;
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest;
- (vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement; and
- (vii) Any arbitrary action in the procurement process.

The CONTRACTOR represents to the PRDOH that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this Contract.

The CONTRACTOR will include these HUD General Provisions in every subcontract issued by it, so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

#### **16. ASSIGNABILITY**

The CONTRACTOR shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the PRDOH.

#### **17. INDEMNIFICATION**

The CONTRACTOR shall indemnify, defend, and hold harmless the Government of Puerto Rico and PRDOH, its agents and employees, from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the CONTRACTOR in the performance of the services called for in this Contract.

#### **18. COPELAND "ANTI-KICKBACK" ACT**

##### **(Applicable to all construction or repair contracts)**

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The CONTRACTOR shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering

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work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

**19. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

**(Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers.)**

The CONTRACTOR shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

All laborers and mechanics employed by CONTRACTORS or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the CONTRACTORS and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

**20. DAVIS-BACON ACT**

**(Applicable to construction contracts exceeding \$2,000 when required by Federal program legislation.)**

The CONTRACTOR shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

All laborers and mechanics employed by CONTRACTORS or subcontractors, including employees of other governments, on construction work assisted under this Contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

On a semi-annual basis, the CONTRACTOR shall submit Form HUD 4710 (Semi-Annual labor Standards Enforcement Report) to PRDOH.

**21. TERMINATION FOR CAUSE**

**(Applicable to contracts exceeding \$10,000)**

If, through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner his or her obligations under this Contract, or if the CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this Contract, the PRDOH shall thereupon have the right to terminate this Contract by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least five (5) days before the

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effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the CONTRACTOR under this Agreement shall, at the option of the PRDOH, become the PRDOH's property and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the Government of Puerto Rico and PRDOH for damages sustained by the Government of Puerto Rico and/or PRDOH by virtue of any breach of the Agreement by the CONTRACTOR, and the Government of Puerto Rico and/or PRDOH may withhold any payments to the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due to the Government of Puerto Rico and/or PRDOH from the CONTRACTOR is determined.

## **22. TERMINATION FOR CONVENIENCE**

### **(Applicable to contracts exceeding \$10,000)**

The PRDOH may terminate this Contract at any time by giving at least ten (10) days' notice in writing to the CONTRACTOR. If the Contract is terminated by the PRDOH as provided herein, the CONTRACTOR will be paid for the time provided and expenses incurred up to the termination date.

## **23. SECTION 503 OF THE REHABILITATION ACT OF 1973**

### **(Applicable to contracts exceeding \$10,000)**

The CONTRACTOR shall comply with Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers with Disabilities:

- 1) The CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:
  - (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - (iii) Rates of pay or any other form of compensation and changes in compensation;

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- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the CONTRACTOR;
  - (vii) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the CONTRACTOR including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
- 2) The CONTRACTOR agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- 3) In the event of the CONTRACTOR's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- 4) The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the CONTRACTOR'S obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The CONTRACTOR must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the CONTRACTOR may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair).
- 5) The CONTRACTOR will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONTRACTOR is bound by the terms of Section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.
- 6) The CONTRACTOR will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The

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CONTRACTOR will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

#### **24. EQUAL EMPLOYMENT OPPORTUNITY**

##### **(Applicable to construction contracts and subcontracts exceeding \$10,000)**

The CONTRACTOR shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

During the performance of this Agreement, the CONTRACTOR agrees as follows:

- 1) The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 2) The CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The CONTRACTOR shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 3) 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 or national origin.
- 4) The CONTRACTOR will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the CONTRACTOR's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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- 5) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- 6) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 7) In the event of the CONTRACTOR's non-compliance with the non-discrimination clause of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, 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 as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- 8) CONTRACTOR shall incorporate the provisions of 1 through 7 above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such subcontractor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, 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 by the contracting agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

**25. CERTIFICATION OF NONSEGREGATED FACILITIES**  
**(Applicable to construction contracts exceeding \$10,000)**

The CONTRACTOR certifies that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control

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where segregated facilities are maintained. The CONTRACTOR agrees that a breach of this certification is a violation of the equal opportunity clause of this Agreement.

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

The CONTRACTOR further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

**26. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS**  
**(Applicable to contracts exceeding \$100,000)**

The CONTRACTOR and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*, and the regulations of the Environmental Protection Agency with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- 1) A stipulation by the CONTRACTOR or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. Part 32 or on the List of Violating Facilities issued by the Environmental Protection Agency (**EPA**) pursuant to 40 C.F.R. Part 15, as amended.
- 2) Agreement by the CONTRACTOR to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other

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requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

- 3) A stipulation that as a condition for the award of the Agreement, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Agreement, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.
- 4) Agreement by the CONTRACTOR that he or she will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the CONTRACTOR will take such action as the government may direct as a means of enforcing such provisions.

## **27. ANTI-LOBBYING**

### **(Applicable to contracts exceeding \$100,000)**

By the execution of this Contract, the CONTRACTOR certifies, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- 3) The CONTRACTOR shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

## **28. BONDING REQUIREMENTS**

**(Applicable to construction and facility improvement contracts exceeding \$100,000)**

The CONTRACTOR shall comply with Puerto Rico bonding requirements, unless they have not been approved by HUD, in which case the CONTRACTOR shall comply with the following minimum bonding requirements:

- 1) A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. 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.
- 2) A performance bond on the part of the CONTRACTOR for one hundred percent (100%) of the Agreement price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the CONTRACTOR's obligations under such contract.
- 3) A payment bond on the part of the CONTRACTOR for one hundred percent (100%) of the Agreement price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

## **29. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

**(As required by applicable thresholds)**

- 1) The work to be performed under this Agreement 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.

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- 2) The parties to this Agreement agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- 3) The CONTRACTOR agrees to send to each labor organization or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the CONTRACTOR's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- 4) The CONTRACTOR agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. 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 C.F.R. Part 135. The CONTRACTOR will not subcontract with any subcontractor where the CONTRACTOR has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.
- 5) The CONTRACTOR will certify that any vacant employment positions, including training positions, that are filled: (1) after the CONTRACTOR is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the CONTRACTOR's obligations under 24 C.F.R. Part 135.
- 6) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- 7) 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 Agreement. 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

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organizations and Indian-owned Economic Enterprises. Parties to this Agreement 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).

- 8) For contracts exceeding \$100,000, the CONTRACTOR shall submit Form HUD 60002 (Section 3 Summary Report) to PRDOH on a quarterly basis, notwithstanding the annual reporting requirement set forth in that form's instructions.

### **30. FAIR HOUSING ACT**

CONTRACTOR shall comply with the provisions of the Fair Housing Act of 1968, as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. The Equal Opportunity in Housing Act prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.

### **31. ENERGY POLICY AND CONSERVATION ACT**

CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency as contained in the Government of Puerto Rico's energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*).

### **32. HATCH ACT**

CONTRACTOR agrees to comply with mandatory standards and policies relating to Hatch Act, Public Law 94-163, as amended.

The Hatch Act applies to political activities of certain state and local employees. As a Puerto Rico Department of Housing CONTRACTOR, you may do any of the following activities: be a candidate in nonpartisan elections; attend political meetings and conventions; contribute money; campaign in partisan elections; and hold office in political parties.

The CONTRACTOR may not do the following activities: be a candidate in partisan elections; use official influence to interfere in elections; coerce political contributions from subordinates in support of political parties or candidates. The office of special counsel operates a website that provides guidance concerning hatch act issues.

### **33. HEALTH AND SAFETY STANDARDS**

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All parties participating in this project agree to comply with Sections 107 and 103 of the Contract Work Hours and Safety Standards Act. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

#### **34. PERSONNEL**

The CONTRACTOR represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of, or have any contractual relationship with, the contracting party. All the services required hereunder will be performed by the CONTRACTOR or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

#### **35. WITHHOLDING OF WAGES**

If in the performance of this Agreement, there is any underpayment of wages by the CONTRACTOR or by any subcontractor thereunder, the PRDOH may withhold from the CONTRACTOR out of payment due to him or her an amount sufficient to pay to employees underpaid the difference between the wages required thereby to be paid and the wages actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the PRDOH for and on account of the CONTRACTOR or subcontractor to the respective employees to whom they are due.

#### **36. CLAIMS AND DISPUTES PERTAINING TO WAGE RATES**

Claims and disputes pertaining to wage rates or to classifications of professional staff or technicians performing work under this Contract shall be promptly reported in writing by the CONTRACTOR to the PRDOH for the latter's decision, which shall be final with respect thereto.

#### **37. DISCRIMINATION BECAUSE OF CERTAIN LABOR MATTERS**

No person employed on the services covered by this Agreement shall be discharged or in any way discriminated against because he or she 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 hereunder to his or her employer.

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### **38. INTEREST OF MEMBERS OF LOCAL PUBLIC AGENCY AND OTHERS**

The CONTRACTOR agrees to establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a family, business, or other tie. The CONTRACTOR will be aware of and avoid any violation of the laws of this State which prohibit municipal officers and employees from having or owning any interest or share, individually or as agent or employee of any person or corporation, either directly or indirectly, in any contract made or let by the governing authorities of such municipality for the construction or doing of any public work, or for the sale or purchase of any materials, supplies or property of any description, or for any other purpose whatsoever, or in any subcontract arising therefrom or connected therewith, or to receive, either directly or indirectly, any portion or share of any money or other thing paid for the construction or doing of any public work, or for the sale or purchase of any property, or upon any other contract made by the governing authorities of the municipality, or subcontract arising therefore or connected therewith.

The CONTRACTOR will also be aware of and avoid any violation of the laws of this State which prescribe a criminal penalty for any public officer who has an interest in any contract passed by the board of which he or she is a member during the time he or she was a member and for one year thereafter.

### **39. INTEREST OF CERTAIN FEDERAL OFFICERS**

No member of, or delegate to, the Congress of the United States and no Resident Commissioner shall be admitted any share or part of this Agreement or to any benefit to arise therefrom.

### **40. INTEREST OF CONTRACTOR**

The CONTRACTOR agrees that it presently has no interest and shall not acquire any interest, direct or indirect, in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of the Work hereunder. The CONTRACTOR further agrees that no person having any such interest shall be employed in the performance of this Agreement.

### **41. POLITICAL ACTIVITY**

The CONTRACTOR will comply with the provisions of the Hatch Act (5 U.S.C. § 1501 et seq.), which limits the political activity of employees.

### **42. RELIGIOUS ACTIVITY**

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The CONTRACTOR agrees to abstain from using any funds related to this Agreement for inherently religious activities prohibited by 24 C.F.R. § 570.200(j), such as worship, religious instruction, or proselytization.

#### **43. FLOOD DISASTER PROTECTION ACT OF 1973**

The CONTRACTOR will ensure that procedures and mechanisms are put into place to monitor compliance with all flood insurance requirements as found in the Flood Disaster Protection Act of 1973, 24 C.F.R. § 570.605.

#### **44. LEAD BASED PAINT**

The CONTRACTOR must comply with the regulations regarding lead-based paint found at 24 C.F.R. Part 35 on LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES with regards to all housing units assisted using CDBG-DR funds.

#### **45. VALUE ENGINEERING**

**(Applicable to construction contracts exceeding \$2,000 when required by Federal program legislation.)**

The CONTRACTOR must comply with the regulations regarding systematic and organized approach to analyze functions of systems, equipment, facilities, services, and materials to ensure they achieve their essential functions at the lowest cost consistent to life cycle in execution, reliability, quality, and safety, in accordance with 24 C.F.R. § 200.318(g).

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## ATTACHMENT H

### CERTIFICATION

#### BEHAR YBARRA & ASSOCIATES, LLC

##### I. Contractor (or Subrecipient) Certification Requirement:

1. Neither the contractor (or subrecipient) nor any of its owners<sup>1</sup>, partners, directors, officials or employees, has agreed to share or give a percentage of the contractor's (or subrecipient's) compensation under the contract<sup>2</sup> to, or otherwise compensate, any third party, whether directly or indirectly, in connection with the procurement, negotiation, execution or performance of the contract.
2. To the best knowledge of the signatory (after due investigation), no person has unduly intervened in the procurement, negotiation or execution of the contract, for its own benefit or that of a third person, in contravention of applicable law.
3. To the best knowledge of the signatory (after due investigation), no person has: (i) offered, paid, or promised to pay money to; (ii) offered, given, or promised to give anything of value to; or (iii) otherwise influenced any public official or employee with the purpose of securing any advantages, privileges or favors for the benefit of such person in connection with the contract (such as the execution of a subcontract with contractor, beneficial treatment under the contract, or the written or unwritten promise of a gift, favor, or other monetary or non-monetary benefit).
4. Neither the contractor (or subrecipient), nor any of its owners, partners, directors, officials or employees or, to the best of its knowledge (after due investigation), its representatives or sub-contractors, has required, directly or indirectly, from third persons to take any action with the purpose of influencing any public official or employee in connection with the procurement, negotiation or execution of the contract, in contravention of applicable law.

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<sup>1</sup> For purposes of this Certification, a contractor's "owner" shall mean any person or entity with more than a ten percent (10%) ownership interest in the contractor.

<sup>2</sup> As used herein, the term "contract" is inclusive of any amendments, modifications or extensions.

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5. Any incorrect, incomplete or false statement made by the contractor's (or subrecipient's) representative as part of this certification shall cause the nullity of the proposed contract and the contractor (or subrecipient) must reimburse immediately to the Commonwealth any amounts, payments or benefits received from the Commonwealth under the proposed contract.

The above certifications shall be signed under penalty of perjury by the Chief Executive Officer (or equivalent highest rank officer) in the following form:

**"I hereby certify under penalty of perjury that the foregoing is complete, true and correct."**

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By: Miguel A. Pérez Correa  
Member

Signature: Miguel A. Pérez Correa  
Miguel A. Pérez Correa (Apr 20, 2021 16:48 EDT)

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Date: 4/20/2021







# Increased Capacity- Environmental Services Agreement- Behar Ybarra & Associates LLC

Final Audit Report

2021-04-21

|                 |  |
|-----------------|--|
| Created:        | 2021-04-15                                     |
| By:             | Radames Comas Segarra (rcomas@vivienda.pr.gov) |
| Status:         | Signed   |
| Transaction ID: | CBJCHBCAABAAv04XRokS0HLcdMpd0DHhJ17_0_gsT9IW   |

## "Increased Capacity- Environmental Services Agreement- Behar Ybarra & Associates LLC" History

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