



CITY OF FARMERSVILLE

REQUEST FOR PROPOSALS (RFP)

COMMUNITY DEVELOPMENT BLOCK GRANT LABOR COMPLIANCE SERVICES

**Submission Proposal Deadline:
THURSDAY, DECEMBER 22, 2016 - 4:30 PM**

Issued by:
City of Farmersville
909 W. Visalia Road
Farmersville, CA 93223

I. INTRODUCTION

The City of Farmersville is requesting proposals from the qualified consultants experienced in labor compliance services specifically related to the administration, monitoring and enforcement of labor standards for two Community Development Block Grant (CDBG) funded projects. The City was awarded funding through the Department of Housing and Community Development Community Development Block Grant Program for the following projects:

- Replace roof of Community Center/Library at 623 N. Avery Avenue, Farmersville, CA 93223. Construct commercial grade kitchen and installation of security system.
- Install security system and HVAC system at Farmersville Museum/Event Center at 881 N. Farmersville Road, Farmersville, CA 93223.

Under the general direction of City staff, the consultant shall perform all Labor Standards Coordinator's duties as delineated in the current CDBG Grant Management Manual. Responsibilities include but are not limited to the following: Ensure that bid packages and construction contracts include all CDBG required language, form and wage decisions; attend pre-construction conferences to inform potential bidders of the labor standards and equal opportunity obligations; insure that all contractors are not debarred and are licensed, review all certified payrolls, conduct on site interviews with employees, and resolve payroll problems prior to authorization of pay request; provide weekly written contractor review summaries to the City; provide monthly reports to the City regarding compliance and prepare semiannual and final labor standards reports. All record keeping and file maintenance issues related to labor standards compliance shall be the responsibility of the consultant. However, all records and files shall be available to the City at all times and will be delivered to the City upon completion of the project.

It is the intent of the City to engage a consultant whom will provide professional services as described herein. However, the City reserves the right, at its sole discretion, to terminate the RFP process or negotiations with a selected consultant and begin a new RFP process or defer the project. Nothing herein, or in the process, shall be construed as having obligated the City to pay for any expenses incurred by respondents to this RFP or to the selected consultant prior to the City Council's approval and execution of a consultant services agreement.

Selected consultant shall hold harmless, defend and indemnify City, its agents, officers and employees from and against any and all liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property arising out of the willful misconduct, or the negligent acts or omissions, of the Consultant or its agents, officers and employees. This indemnification specifically includes any claims that may be made against the City by any taxing authority asserting that the employer-employee relationship exists by reason of the consultant agreement; any claims made against the City alleging civil rights violations by the Consultant

under Government Code Sections 12920 et seq. (California Fair Employment and Housing Act). The indemnification obligation shall continue beyond the term of the consultant agreement as to any willful misconduct, errors, omissions, or negligent acts occurring under the executed agreement or any extension of said agreement.

II. SCOPE OF WORK

Provide all labor compliance services for administering, monitoring and enforcing labor standards provisions as required for a CDBG-funded project. The consultant shall perform all Labor Standards Coordinator's duties as delineated in the current CDBG Grant Management Manual. Responsibilities include but are not limited to the following: Ensure that bid packages and construction contracts include all CDBG required language, form and wage decisions; attend the pre-construction conferences to inform potential bidders of the labor standards and equal opportunity obligations; insure that all contractors are not debarred and are licensed, review all certified payrolls, conduct on site interviews with employees, and resolve payroll problems prior to authorization of pay request; provide weekly written contractor review summaries to the City; provide monthly reports to the City regarding compliance and prepare semiannual and final labor standards reports. All record keeping and file maintenance issues related to labor standards compliance shall be the responsibility of the consultant. However, all records and files shall be available to the City at all times and will be delivered to the City upon completion of the project.

The typical activities include, but are not limited to, the following activities:

- Assist and advise City with Davis-Bacon wage rates, contractor bid forms, and all HUD requirements.
- Monitor and audit labor standards under the Davis-Bacon Act, CDBG and other local, state, and federal requirements.
- Verify the contractor and subcontractors eligibilities to contract with Federal and State agencies.
- Obtain applicable state and federal wage classification decisions as required.
- Audit payroll and benefit records and certified wage submissions on a weekly basis to ensure compliance with Davis-Bacon requirements.
- Audit Davis-Bacon additional recordkeeping and other requirements.
- Monitor wage provision contract compliance for contractors.
- Create and maintain Labor Standards Enforcement File.
- Establish and maintain contractor and subcontractor labor files for each contractor/subcontractor.

- Participate in the pre-construction meeting and inform contractors of wage and reporting obligations.
- Conduct employee field interviews and reconcile with Certified Payrolls. Verify and document posting of federal notices on jobsite.
- Provide information to the contractor including Davis-Bacon requirements, Federal Labor Standards Guidebook for payroll forms and statement of compliance.
- Notify the prime contractor in writing of any labor discrepancies or suspected violations and define the corrective actions to be taken including restitution payments.
- Identify violations and investigate complaints of underpayment to workers.
- Provide other data and annual and/or quarterly reports as requested by the City related to compliance with its CDBG projects labor standard requirements.
- Deliver all documents to the City at the conclusion of the project.

III. PROPOSAL SUBMITTAL

- A. The City of Farmersville must receive two copies (plus 1 electronic) of your proposal no later than 4:30 PM on Thursday, December 22, 2016. All proposals received after this date and time will be rejected.
- B. Proposals shall be submitted to:
- John Jansons, City Manager
City of Farmersville
909 W. Visalia Road
Farmersville, CA 93223
JJansons@cityoffarmersville-ca.gov
- C. All proposals shall be submitted in a sealed envelope which is clearly marked with the RFP number and title of RFP.
- D. Proposals shall be signed by an authorized employee in order to receive consideration.
- E. All proposals, whether selected or rejected, shall become the property of the City.
- F. The City will not be responsible for proposals delivered to a person/location other than specified herein.

IV. AWARD CRITERIA AND SELECTION PROCESS

The City is using the competitive negotiation process, wherein the experience of each proposer is evaluated as it relates to the Scope of Work and grant purpose. The City is interested in receiving proposals from all qualified proposers including, but not limited to, female, minority, and locally-owned small businesses. After the evaluation committee has reviewed and discussed proposals with the proposing firms, each firm will be rated using the following criteria and rating schedule.

A. Evaluation Criteria

EVALUATION CRITERIA	RATING POINTS
Demonstration of understanding of the work to be performed as outlined in the RFP	40
Specific experience with Grant and CDBG labor standards compliance requirements	35
Capacity to perform the Scope of Work and past performance	15
Proposed Cost	10
TOTAL	100

- B. City staff will then exercise its discretion in selecting a firm and will negotiate and contract in accordance with that City selection.
- C. The City reserves the right to award a contract to the firm or individual that presents the proposal which, in the sole judgment of the City, best serves the interest of the City.
- D. The City reserves the right to reject any or all proposals, to waive minor irregularities in said proposals, or to negotiate minor deviations with the successful firm. All proposers submit their proposals to the City with the understanding that the recommended selection is final.

V. CONFLICT OF INTEREST

Consultant warrants that no official or employee of the City nor any business entity in which an official of the City has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract, nor that any such person will be employed in the performance of such contract without immediate divulgence of such fact to the City.

VI. ASSIGNMENT

Any contract resulting from this bid and any amendments or supplements thereto shall not be assignable by the successful bidder either voluntarily or by operation of law, without the written approval of the City and shall not become an asset in any bankruptcy, receivership, or guardianship proceedings. Any assignee would need to have equivalent qualifications as to retain award eligibility.

VII. ADDITIONAL INFORMATION

This RFP does not commit the City to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure a contract for services. The City reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm or to modify or cancel in part or in its entirety the Request for Proposal if it is in the best interests of the City to do so.

The prospective consultant is advised that should this RFP result in recommendation for award of a contract, the contract will not be in force until it is approved by the City Council and fully executed by the City.

A sample of the proposed contract agreement is attached herein as Appendix A. The Consultant shall adhere to the provisions of this agreement. The Consultant shall be advised that the City will not negotiate any part of the standard professional services agreement.

VIII. LIST OF ATTACHMENTS

- A. Sample of Consultant Service Agreement
- B. CDBG General Terms and Conditions

ATTACHMENT A

CITY OF FARMERSVILLE

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2016 by and between the City of Farmersville, a political subdivision of the State of California (hereinafter "City") and _____, a _____ (hereinafter "Contractor").

RECITALS

WHEREAS, City requires services related to _____.

WHEREAS, Contractor is qualified to perform such services;

NOW, THEREFORE, City and Contractor mutually agree as follows:

1. SCOPE OF SERVICES

City hereby engages Contractor, and Contractor agrees to perform the services described in the scope of services attached as **Exhibit A**, incorporated herein by reference as though fully set forth.

2. COMPENSATION

Total compensation shall be as set forth in **Exhibit A**. Consultant shall not be entitled to nor receive from City any additional consideration, compensation or other remuneration for services rendered under this Agreement.

3. METHOD OF PAYMENT

Upon submission of an invoice by Contractor, and upon approval of the City's representative, City shall pay Contractor monthly in arrears for fees and expenses incurred the prior month, up to the maximum amount provided for in Section 2. Each invoice must include a description of services rendered, to whom, date of service and the charges according to the agreed upon method.

4. TIME

Time for performance of this Agreement is of the essence.

5. TIME OF PERFORMANCE

This Agreement shall remain in full force and effect until both parties have completed performance.

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Work will not begin, nor claims paid for services under this Agreement until all Certificates of Insurance, a Signing Authority Form, By-Laws, Business and Professional Licenses/Certificates, Verification of Non-Profit status, IRS ID number or other applicable licenses or certificates, as required, are on file with the Department's representative.

6. MODIFICATION AND TERMINATION WITHOUT CAUSE

This Agreement may be modified only by a written amendment signed by the parties.

This Agreement may be terminated by City or Contractor, at any time, without cause, upon 30 day written notice to the other party.

Following termination, Contractor shall turn over to the City all completed deliverables and then shall be reimbursed for all expenditures made in good faith that are due and unpaid at the time of termination not to exceed the maximum amount payable under this Agreement.

7. TERMINATION BY DEFAULT

If Contractor defaults in its performance, City shall promptly notify Contractor in writing. If Contractor fails to cure a default within ten (10) days after notification or if the default requires more than ten (10) days to cure and Contractor fails to commence to cure the default within ten (10) days after notification, then Contractor's failure shall terminate this Agreement.

Alternatively, City may elect to cure the default and any expense incurred shall be payable by Contractor to City.

If this Agreement is terminated because of Contractor's default, City shall be entitled to recover from Contractor all damages allowed by law.

8. CLOSING OUT

Contractor is responsible for City's receipt of a final claim for payment by completion of work. City shall promptly pay Contractor's final claim for payment providing Contractor has provided all obligations undertaken pursuant to this Agreement. If Contractor has failed to perform all such outstanding obligations, City shall withhold from Contractor's final claim for payment the amount of such services owed by Contractor.

9. WARRANTY

City relies upon Contractor's professional ability and training as a material inducement to enter into this Agreement. Contractor warrants that it will perform its work according to generally accepted professional practices and standards and the requirements of applicable federal, state and

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local laws. City's acceptance of Contractor's work shall not constitute a waiver or release of Contractor from professional responsibility.

Contractor further warrants that it possesses current valid appropriate licensure, including, but not limited to, drivers license, professional license, certificate of tax-exempt status, or permits, required to perform the work under this Agreement.

10. STANDARD OF PERFORMANCE

Contractor warrants that it will, at all times utilizing its ability, experience and talent, faithfully, industriously and professionally perform to City's reasonable satisfaction.

11. INSURANCE

Insurance.

A. Without limiting City's right to obtain indemnification from the Contractor or any third parties, prior to commencement of work, Contractor shall purchase and maintain the following types of insurance for minimum limits indicated during the term of this Agreement and provide a Certificate of Endorsement from Contractor's Insurance Carrier guaranteeing such coverage to the City. Such Certificate shall be mailed as set forth under Section 25. Notice. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, City may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

1. Commercial General Liability. \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering bodily injury, personal injury and property damage. The City and its officers, employees and agents shall be endorsed to above policies as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.
2. Automobile Liability. Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000) per person, Five Hundred Thousand Dollars (\$500,000) per accident and for property damages not less than Fifty Thousand Dollars (\$50,000), or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000). Coverage should include owned and non-owned vehicles used in connection with this Agreement.
3. Workers Compensation. Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

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4. Professional Liability. \$1,000,000 limit per occurrence and \$2,000,000 annual aggregate limit covering Contractor's wrongful acts, errors and omissions.

B. Insurance Conditions.

1. Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A:VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the City's Risk Manager.

2. Each of the above required policies shall be endorsed to provide City with thirty (30) days prior written notice of cancellation. City is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of Contractor to furnish insurance during the term of this Agreement.

12. INDEMNIFICATION

Contractor has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, City, its City Council, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract or otherwise. This duty shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents and officers of Contractor.

Contractor's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the Contractor, its agents, sub-Contractors and employees. The duty shall extend to any allegation or claim of liability except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of City. This duty shall arise at the first claim or allegation of liability against City. Contractor will on request and at its expense defend any action suit or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

This indemnification specifically includes any claims that may be against City by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement.

These indemnification obligations shall survive the termination of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

13. INDEPENDENT CONTRACTOR

A. Contractor is an independent contractor and not an agent, officer or employee of City. The

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parties mutually understand that this Agreement is by and between two independent contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

B. Contractor shall have no claim against City for employee rights or benefits including, but not limited to seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental or hospital benefits, retirement benefits, Social Security, disability, Workers' Compensation, unemployment insurance benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence.

C. Contractor is solely obligated to pay all applicable taxes, deductions and other obligations including, but not limited to, federal and state income taxes, withholding, Social Security, unemployment, disability insurance, Workers' Compensation and Medicare payments.

D. Contractor shall indemnify and hold City harmless from any liability which City may incur because of Contractor's failure to pay such obligations.

E. As an independent contractor, Contractor is not subject to the direction and control of City except as to the final result contracted for under this Agreement. City may not require Contractor to change its manner of doing business, but may require redirection of efforts to fulfill this Agreement.

F. Contractor may provide services to others during the same period Contractor provides service to City under this Agreement.

G. Any persons employed by Contractor shall be under Contractor's exclusive direction, supervision and control. Contractor shall determine all conditions of employment including hours, wages, working conditions, discipline, hiring and discharging or any other condition of employment.

H. As an independent contractor, Contractor shall indemnify and hold City harmless from any claims that may be made against City based on any contention by a third party that an employer-employee relationship exists under this Agreement.

I. Contractor, with full knowledge and understanding of the foregoing, freely, knowingly, willingly and voluntarily waives the right to assert any claim to any right or benefit or term or condition of employment insofar as they may be related to or arise from compensation paid hereunder.

14. RESPONSIBILITIES OF CONTRACTOR

A. Contractor possesses the requisite skills necessary to perform the work under this Agreement and City relies upon such skills. Contractor pledges to perform its work skillfully and professionally. City's acceptance of Contractor's work does not constitute a release of Contractor from its professional

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responsibility.

B. Contractor verifies that it has reviewed the scope of work to be performed under this Agreement and agrees that in its professional judgment, the work can and shall be completed for costs within the maximum amount set forth in this Agreement.

C. To fully comply with the terms and conditions of this Agreement, Contractor shall:

1. Establish and maintain a system of accounts for budgeted funds that complies with generally accepted accounting principles for government agencies. Contractor shall document all costs by maintaining complete and accurate records of all financial transactions associated with this Agreement, including, but not limited to, invoices and other official documentation which sufficiently support all charges under this Agreement.

2. Submit monthly cost reimbursement claims. Documented verification of actual expenditures must support each claim. Reimbursement shall only be for expenditures that directly benefit the City of Farmersville.

3. Retain financial, programmatic, client data and other service records for three years from the date of the end of the contract award or for three years from the date of termination.

15. COMPLIANCE WITH LAW

Contractor shall comply with all federal, state and local laws and regulations applicable to its performance, including, but not limited to, licensing, employment and purchasing practices, wages, hours and conditions of employment.

16. CONFIDENTIALITY

Contractor shall prevent unauthorized disclosure of any confidential information, except for statistical information not identifying a particular City employee.

Contractor shall not use City employee confidential information for any purpose other than carrying out Contractor's obligations under this Agreement.

Contractor shall promptly transmit to City all requests for disclosure of confidential information.

17. CONFLICT OF INTEREST

Contractor warrants that its employees or their immediate families or Board of Directors or officers have no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any interest, direct or indirect, which conflicts with the rendering of services under

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this Agreement. Contractor shall employ or retain no such person while rendering services under this Agreement. Services rendered by Contractor's associates or employees shall not relieve Contractor from personal responsibility under this clause.

Contractor has an affirmative duty to disclose to City in writing the name(s) of any person(s) who have an actual, potential or apparent conflict of interest.

18. DRUG FREE WORKPLACE

Contractor warrants that it is knowledgeable of Government Code section 8350 *et seq.* regarding a drug free workplace and shall abide by and implement its statutory requirements.

19. HEALTH AND SAFETY STANDARDS

Contractor shall abide by all health and safety standards set forth by the State of California and/or the City of Farmersville pursuant to the Injury and Illness Prevention Program.

Contractor acknowledges receipt of all health and safety information and training.

20. INSPECTION

Authorized representatives of City, the state and/or the federal government may inspect and/or audit Contractor's performance, place of business and/or records pertaining to this Agreement.

21. NONDISCRIMINATION

In rendering services under this Agreement, Contractor shall comply with all applicable federal, state and local laws, rules and regulations and shall not discriminate based on age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation.

Contractor shall not discriminate against its employees, which includes, but is not limited to, 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.

Further, Contractor shall include this provision in all its subcontracts to perform work under this Agreement.

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22. SUBCONTRACTOR AND ASSIGNMENT

Services under this Agreement are deemed to be personal services. Contractor shall not subcontract any work under this Agreement nor assign this Agreement or monies due without the prior written consent of the departmental contract manager, department head or his or her designee and the City Administrative Officer subject to any required state or federal approval.

Assignment by Contractor of any monies due shall not constitute an assignment of the Agreement.

23. UNFORESEEN CIRCUMSTANCES

Contractor is not responsible for any delay caused by natural disaster, war, civil disturbance, labor dispute or other cause beyond Contractor's reasonable control, provided Contractor gives written notice to City of the cause of the delay within ten days of the start of the delay.

24. OWNERSHIP OF DOCUMENTS

City shall be the owner of and shall be entitled to possession of any computations, plans, correspondence or other pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by City or upon completion of the work pursuant to this Agreement. City's reuse of any such materials on any project other than the project for which they were originally intended shall be at City's sole risk.

No material prepared in connection with the project shall be subject to copyright in the United States or in any other City.

25. NOTICE

Any notice necessary to the performance of this Agreement shall be given in writing by personal delivery or by prepaid first-class mail addressed as follows:

CITY:
City of Farmersville
909 W. Visalia Road
Farmersville, CA 93223

CONTRACTOR:

If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail, notice is effective as of three days following the date of mailing or the date of delivery reflected upon a return receipt, whichever occurs first.

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26. NONRENEWAL

Contractor acknowledges that there is no guarantee that City will renew Contractor's services under a new agreement following expiration or termination of this Agreement. Contractor waives all rights to notice of non-renewal of Contractor's services.

27. CHANGES AND AMENDMENTS

City may request changes in Contractor's scope of services. Any mutually agreed upon changes, including any increase or decrease in the amount of Contractor's compensation, shall be effective when incorporated in written amendments to this Agreement. Amendments that are not State approved vendor agreement amendments shall be submitted to the State for prior approval at least thirty days before the effective date of any proposed changes governing compensation, services or term.

The party desiring the revision shall request amendments to the terms and conditions of this Agreement in writing. Any adjustment to this Agreement shall be effective only upon the parties' mutual agreement in writing. All amendment requests shall be submitted in writing to the City Administrator's Office.

No verbal agreements or conversations prior to execution of this Agreement or requested Amendment shall affect or modify any of the terms or conditions of this Agreement unless reduced to writing according to the applicable provisions of this Agreement.

28. CHOICE OF LAW

The parties have executed and delivered this agreement in the City of Farmersville, State of California. The laws of the State of California shall govern the validity, enforceability or interpretation of this Agreement. The City of Farmersville shall be the venue for any action or proceeding, in law or equity that may be brought in connection with this Agreement. Contractor hereby waives any rights it may possess under Section 394 of the Code of Civil Procedure to transfer to a neutral City or other venue any action arising out of this Agreement.

29. ENTIRE AGREEMENT; COUNTERPARTS; CONTRIBUTIONS OF BOTH PARTIES

This Agreement, including any exhibits referenced herein, constitutes the entire agreement between the parties and there are no inducements, promises, terms, conditions or obligations made or entered into by City or Contractor other than those contained herein.

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. This Agreement represents the contributions of both parties, who are each represented by competent counsel, and it is expressly agreed and understood that the rule stated in Civil Code section 1654, that

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ambiguities in a contract should be construed against the drafter, shall have no application to the construction of the Agreement.

30. SEVERABILITY

If any of the provisions of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

31. AUTHORITY

Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the Party to which its signature represents.

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

CITY OF FARMERSVILLE

By: _____

By: _____

John Jansons, City Manager

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ATTACHMENT B: CDBG GENERAL TERMS AND CONDITIONS

1. Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors

The proposer certifies, by signing and submitting this proposal, that it is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

Nevada City shall not enter into any agreement, written or oral, with any contractor without the prior determination that the contractor is eligible to receive CDBG Funds and is not listed on the Federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

2. Compliance with State and Federal Laws and Regulations

- A. The contractor agrees to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the City of Farmersville.
- B. The contractor agrees to comply with all Federal laws and regulations applicable to the CDBG Program and to the grant activity(ies).

3. Anti-Lobbying Certification

The proposer certifies, by signing and submitting this proposal, to the best of his or her knowledge or belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 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, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions."

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. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

4. Conflict of Interest of Certain Federal Officials

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

5. Equal Opportunity

- A. The Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances:

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During the performance of this agreement, the Grantee (City of Farmersville) and its contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status, or religious preference, under any grant activity funded by this Agreement, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, the Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

B. Rehabilitation Act of 1973 and the "504 Coordinator":

The Grantee (City of Farmersville) and its contractor further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR, Part 8, including, but not limited to, for Grantees with fifteen (15) or more permanent full or part time employees, the local designation of a specific person charged with local enforcement of this Act, as the "504 Coordinator."

C. The Training, Employment, and Contracting Opportunities for Business and Lower- Income Persons Assurance of Compliance:

1. The grant activity(ies) to be performed under this Agreement are subject to the requirements of Section 3 of the HUD Act of 1968, as amended, 12 U.S.C. 1701u. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in 24 CFR, Part 135.34(a)(2).
2. The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. The Grantee (City of Farmersville) and its contractor will include these Section 3 clauses in every contract and subcontract for Work in connection with the grant activity(ies) and will, at the direction of the Department, take appropriate action pursuant to the contract or subcontract upon a finding that the Grantee or any contractor or subcontractor is in violation of regulations issued by the Secretary of HUD, 24 CFR, Part 135 and, will not let any contract unless the Grantee or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
4. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement shall be a condition of the Federal financial assistance provided to the grant activity(ies), binding upon the Grantee, its successors, and assigns. Failure to fulfill these requirements shall subject the Grantee, its contractors and subcontractors and its successors, to such sanctions as are specified by 24 CFR, Part 135 and those sanctions specified by this Agreement.

D. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or more:

The Grantee (City of Farmersville) and its contractor hereby agree to place in every contract and subcontract for construction exceeding \$10,000 the Notice of Requirement for Affirmative

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Action to ensure Equal Employment Opportunity (Executive Order 11246), the Standard Equal Employment Opportunity, and the Construction Contract Specifications. The Grantee furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and subcontracts.

6. Federal Labor Standards Provisions

- A. Davis-Bacon Act (40 U.S.C. 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Federal Department of Labor and are issued in the form of federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.
- B. "Anti-Kickback Act of 1986" (41 U.S.C. 51-58) prohibits any person from (1) providing, attempting to provide, or offering to provide any kickback; (2) soliciting, accepting, or attempting to accept any kickback; or (3) including directly or indirectly, the amount of any kickback prohibited by clause (1) or (2) in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.
- C. Contract Work Hours and Safety Standards Act - CWHSSA (40 U.S.C. 3702) requires that workers receive "overtime" compensation at a rate of one to one-half (1-1/2) times their regular hourly wage after they have worked forty (40) hours in one week.
- D. Title 29, Code of Federal Regulations CFR, Subtitle A Parts I, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

The Grantee (City of Farmersville) and its contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Department for review upon request.

7. Procurement

The Grantee (City of Farmersville) and its contractor shall comply with the procurement provisions in 24 CFR, Part 85.36, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.

8. Uniform Administrative Requirements

The Grantee (City of Farmersville) and its contractor shall comply with applicable Uniform Administrative Requirements as described in 24 CFR, Section 570.502, including cited Sections of 24 CFR, Part 85.

9. Section 3

The Grantee (City of Farmersville) and its contractor will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing Regulations at 24 CFR, Part 135.

10. Energy Efficiency

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

COST OR PRICE ANALYSIS

In addition to the requirements for competitive procurement and maintenance of a written code of standards of conduct, those who procure consultant services must be prepared to: (1) conduct a cost or price analysis; and (2) ensure that the contract price and profit are reasonable.

A. Contract cost and price

1. Cost or price analysis

Federal Regulation 24 CFR 85.36(f)(1) provides that "grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the bidder is required to submit the elements of estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price."

Federal Regulation 24 CFR 84.45 states that "some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. A price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

Guidance for implementation:

As provided in the regulations identified above, recipients and subrecipients must perform their own cost or price analysis for every procurement action for consulting services, including contract modifications or change orders. The method and degree of analysis depends on the facts related to each procurement, but as a starting point, the recipient/subrecipient must make independent estimates before receiving bids or proposals.

- a. Price analysis is the process of examining and evaluating a proposed price without examining its separate cost elements and proposed profit. As price analysis is associated with the sealed bid method of procurement, which is

not the preferred approach to procuring professional services, the need to conduct a price analysis for such services will be limited. However, where the need arises to conduct a price analysis for consulting services, approaches that can be used to determine if a proposed price is fair and reasonable include:

- i. A comparison of the proposed prices received in response to the solicitation;
 - ii. A review of historical/previous prices proposed against current prices proposed for the same or similar items;
 - iii. A comparison with published prices or market prices;
 - iv. A comparison with internal, independent estimates;
 - v. A comparison of detailed price information to assess the overall price (which may involve use of cost principles as general guidance in determining price reasonableness).
- b. Cost analysis differs from price analysis in that it is the review and evaluation of the separate elements of cost and proposed profit, and the reasonableness of those estimated costs of performance. Cost analysis is necessary when cost or pricing data are required, as well as when adequate price competition is lacking (e.g., use of non-competitive procedures), for sole source procurements, or when price analysis alone is insufficient to ensure the proposed price is reasonable. Cost analysis is also required for contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. Approaches to cost analysis and ensuring that proposed costs represent accurate projections include:
- i. Verification that costs submitted by the bidder comply with applicable cost principles, including that direct and indirect costs are allowable and allocable, as well as reasonable;
 - ii. A comparison of the bidder's proposed costs with internal, independent estimates;
 - iii. A comparison of historical/previous actual costs from the bidder, or previous cost estimates from the bidder or from other bidders, with the current/proposed costs for the same or similar items;
 - iv. A comparison of proposed cost items with published catalogue prices, market costs, etc.

In addition to evaluating such factual data on costs, cost analysis should also consider the judgmental factors used by the offeror to arrive at the estimated costs that were submitted, i.e., what judgmental factors and methods (mathematical or other) were used in projecting the data submitted in the proposal. This part of the cost analysis should ensure that the factual data presented reasonably reflects the need(s) identified in the solicitation.

In carrying out their responsibilities in the performance of price and cost analysis, recipients and subrecipients are to follow the provisions of OMB Circulars A-87 and A-122, as applicable.

2. Contract price and profit

In accordance with 24 CFR Section 85.36(f)(2), recipients and subrecipients will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see 24 CFR 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles. The cost plus a percentage of cost and percentage of construction cost methods of contracting **shall not** be used.

24 CFR 84.44 states that the type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. Similar to Part 85, Part 84 provides, the "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

Guidance for implementation:

In accordance with the above requirements, recipients and subrecipients will negotiate profit as a separate element of the price for each consultant contract in which there is no price competition and in all cases where a cost analysis is performed. To establish a fair and reasonable profit, it may be useful to establish a general range of profit for the work being done, with consideration given to the complexity of the work to be performed, the risk borne by the consultant, the consultant's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. If profit is shown as a percentage of cost relative to the work to be done, the recipient should review such amount and make adjustments, as needed, based on the factors identified above in this paragraph.