



**Request for Proposal No. EDA121-EDA-4203  
Affordable Housing Multi-Family Project  
Compliance and Monitoring Services**

**San Bernardino County  
Community Development and Housing  
385 N. Arrowhead Ave., 3<sup>rd</sup> Floor  
San Bernardino, CA 92415  
04/08/2021**

## I. INTRODUCTION

The County of San Bernardino Community Development and Housing Agency (CDHA) is a multidisciplinary Agency that formulates intra- and inter-departmental and interagency partnerships to develop and manage affordable housing; ensure and protect fair housing rights, revitalize neighborhoods and communities, and manage programs dedicated to preventing and reducing homelessness. Specifically spearheaded by the Community Development and Housing (CDH) Department, CDHA leverages and manages various federal, state, and local resources to meet its overarching goals of positively impacting communities by creating and developing affordable housing opportunities, eliminating homelessness, creating economic development opportunities and revitalizing communities. CDH's structure is comprised of the following operational divisions: Grant Management, Asset Management, Project Management, Homelessness and Fiscal.

### A. Purpose

The County of San Bernardino, Community Development and Housing Department (County), is seeking Proposals from interested and qualified Proposers to develop guidelines, provide annual monitoring and compliance services, and assist with updating and implementing a customized web-based software called Housing and Development Software ("HDS") which will be used as the County's compliance and documentation repository. Additionally, the County seeks to improve the efficacy of its monitoring program related to its existing affordable housing portfolio that is funded and/or layered with various funding sources such as: Neighborhood Stabilization Program (NSP), HOME Investment Partnership (HOME), Low Income Housing Tax Credits (LIHTC), Mental Health Services Act (MHSA), Former Redevelopment Agency (RDA), Special Needs Housing Program (SNHP); No Place Like Home (NPLH); Veteran Affairs Supportive Housing (VASH); Section 8 Housing Choice Vouchers. The number of awards will be determined by the quality of the proposals received, costs for services and the Proposers ability to provide services, either wholly or in part.

### B. RFP Contact

All correspondence , must be submitted to the person identified below (RFP Contact):

San Bernardino County, Community Development and Housing Department  
Attn: Bruce Cole  
777 E. Rialto Ave, San Bernardino, CA 92415  
(909) 387-2148 Phone  
(909) 387-2666 Fax  
[bcole@pur.sbcounty.gov](mailto:bcole@pur.sbcounty.gov) Email

Fax number and e-mail address may only be used to submit questions. Proposals will not be accepted by email or facsimile. Proposals must be submitted electronically through the County Electronic Procurement Network (ePro). **All Proposers must register with the ePro system prior to the date and time to submit the proposal or they will be disqualified.**

**Reserved**

### C. Contract Term

Services to be provided under this Request for Proposals (RFP) are outlined under Section V, Scope of Work. The Contract period will be for 2 years beginning on July 1, 2021 and ending on June 30, 2023 and may be extended for up to a maximum of three (3) additional years.

### D. Location of Services

Location(s) where Services are to be provided, completed and managed throughout the entire San Bernardino County.

The Proposer must include in Proposal, Attachment E - Cost, all transportation, lodging, and per diem costs sufficient to pay its personnel and travel to the aforementioned locations.

**E. Assistance to Proposers with a Disability**

Proposers with a disability may request accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the RFP Contact no later than ten (10) days prior to the Deadline for Proposals.

**II. PROPOSAL TIMELINE**

Release of RFP	April 16, 2021
Deadline for Submission of Questions	April 30, 2021
Deadline for Proposals	May 21, 2021
Date for Tentative Contract Award	July 1, 2021

**III. DEFINITIONS**

Capitalized terms used in this RFP shall have the meanings given to them in the RFP and as defined below:

Board: The San Bernardino County Board of Supervisors.

Community Development Block Grant (CDBG): Program provides annual grants on a formula basis to states, cities, and counties to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons.

Contract: The Contract between the County and the Proposer resulting from the award issued pursuant to this RFP to the successful Proposer.

Contractor: Any individual, company, firm, corporation, partnership, or other organization to whom a contract award is made by the County.

Facilitator: A County Purchasing Department buyer or designated individual tasked with managing the processes of the evaluation panel.

HOME Investment Partnership Program (HOME): A type of United States federal assistance provided by the U.S. Department of Housing and Urban Development (HUD) to States in order to provide decent and affordable housing, particularly housing for low- and very low-income Americans.

Low-Income Housing Tax Credits (LIHTC): A tax incentive to construct or rehabilitate affordable rental housing for low-income households, it subsidizes the acquisition, construction, and rehabilitation of affordable rental housing for low- and moderate-income tenants.

Mental Health Services Act (MHSA): Funds used to reduce the long-term adverse impact on individuals and families resulting from untreated serious mental illness.

Mortgage Revenue Bonds (MRB): Proceeds used to finance low-cost mortgages for lower-income first-time homebuyers or the production of apartments at rents affordable to lower-income families.

Neighborhood Stabilization Program (NSP): A grant provided to states, certain local communities, and other organizations to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop these homes in order to stabilize neighborhoods and stem the decline of house values of neighboring homes.

No Place Like Home Program (NPLH): Bond proceeds used to invest in the development of permanent supportive housing for persons who are in need of mental health services and are experiencing homelessness, chronic homelessness, or who are at risk of chronic homelessness

Proposal: The offer to provide specific goods or services at specified prices and/or other conditions specified in the RFP.

Purchasing Agent: The Director of the County Purchasing Department.

Request for Proposal (RFP): The request for an offer from Proposers interested in providing the identified services sought to be procured by the County. The RFP specifies the evaluation factors to be used and contains or incorporates by reference contractual terms and conditions applicable to the procurement.

Services: The requested services described in this RFP.

Special Needs Housing Program (SNHP): Allows the use of Mental Health Services Act (MHSA) and other local funds to provide financing for the development of permanent supportive rental housing that includes units dedicated for individuals with serious mental illness, and their families, who are homeless or at risk of homelessness

Subcontractor: An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by Contractor who is performing services on behalf of Contractor under the Contract or under a separate contract with or on behalf of Contractor.

U.S. Department of Housing and Urban Development (HUD): a U.S. government agency created in 1965 to support the housing market and homeownership. HUD does this by improving affordable homeownership opportunities, increasing safe and affordable rental options, reducing chronic homelessness, fighting housing discrimination by ensuring equal opportunity in the rental and purchase markets and supporting vulnerable populations.

#### **IV. PROPOSAL CONDITIONS**

##### **A. Authorized Signatures**

All proposals must be signed by an individual authorized to bind the Proposer to the provisions of the RFP.

##### **B. Term of Offer**

Proposals shall remain open, valid and subject to acceptance anytime within nine (9) months after the Proposal submission.

##### **C. Required Review**

Proposers should carefully review this RFP for defects and questionable or objectionable material. Comments from Proposers concerning defects and objectionable material in this RFP must be made in writing and received by the RFP contact prior to the deadline for submission of questions identified in Section II or at least ten (10) calendar days before the Deadline for Proposals (whichever occurs last). This will allow issuance of any necessary amendments or addendums to the RFP. It will also help prevent the opening of a defective RFP and exposure of Proposals upon which an award could not be made. Protests based on any omission or error, or on the content of this RFP, may be disallowed if not submitted in writing to the attention of the RFP Contact, prior to the deadline for submission of questions identified in Section II or at least ten (10) calendar days before the Deadline for Proposals (whichever occurs last).

##### **D. Incurred Costs**

The County is not obligated to pay any costs incurred by Proposer in the preparation of a Proposal in response to this RFP. Proposers agree that all costs incurred in developing a Proposal are the Proposer's responsibility.

**E. Amendments/Addendums to RFP**

The County reserves the right to issue amendments or addendums to this RFP if the County considers that changes are necessary or additional information is needed.

Changes to a Proposal or withdrawal of a Proposal will only be allowed if a request is received prior to the Deadline for Proposals. No amendments or withdrawals will be accepted after the Deadline for Proposals.

**F. Best Value Evaluation**

As established in this RFP, the County realizes that criteria other than price are important and will award contract(s) based on the Proposal that best meets the needs of the County. The County seeks the optimal combination of quality, price, and various qualitative elements of the required Services that will provide the County the greatest or best value for its money.

**G. Right of Rejection**

Offers must comply with all of the terms of the RFP, and all applicable local, state, and federal laws, codes, and regulations. The County may reject as non-responsive any Proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the RFP. Further, the County may reject a proposal from any entity that is a parent, affiliate, or subsidiary, or that is under common ownership, control, or management with any other entity submitting a Proposal in response to this RFP.

A Proposer may not qualify the Proposal nor restrict the rights of the County. If Proposer does so, the Proposal may be determined to be a non-responsive counteroffer and the Proposal may be rejected.

No Proposal shall be rejected, however, if it contains a minor irregularity, defect or variation. If the irregularity, defect or variation is considered by the County to be immaterial or inconsequential, the County may choose to accept the Proposal.

Minor irregularities may be waived by the Purchasing Agent when they are any of the following:

1. Do not affect responsiveness.
2. Are merely a matter of form or format.
3. Do not change the relative standing or otherwise prejudice other offers.
4. Do not change the meaning or scope of the RFP.
5. Are trivial, negligible, or immaterial in nature.
6. Do not reflect a material change in the work; or
7. Do not constitute a substantial reservation against a requirement or provision.

In such cases the Proposer will be notified of the deficiency in the Proposal and given an opportunity to correct the irregularity, defect or variation or the County may elect to waive the deficiency and accept the Proposal. The decision to provide a waiver shall in no way modify or compromise the overall purpose of the submittal, nor excuse the Proposer from compliance with all requirements if awarded a Contract.

This RFP does not commit the County to award a contract. The County reserves the right to reject any or all Proposals if it is in the best interest of the County to do so. The County also reserves the right to terminate this RFP process at any time.

**H. Clarification of Offers**

In order to determine if a Proposal is reasonably susceptible for award, communications by the Facilitator

for the evaluation panel are permitted with a Proposer to clarify uncertainties or eliminate confusion concerning the contents of a Proposal. Clarifications may not result in a material or substantive change to the Proposal. The evaluation by the panel may be adjusted as a result of a clarification under this section.

#### **I. Public Records Act**

All Proposals and other material submitted become the property of the County and are subject to release according to the California Public Records Act (Government Code § 6250). All Proposal information, including cost information, will be held in confidence during the evaluation and negotiation process. Thereafter, Proposals are subject to becoming a non-exempt public record.

If a Proposer believes that any portion of its Proposal is exempt from public disclosure, it must indicate the specific portions believed to be confidential and not subject to disclosure on Attachment I - Public Records Act Exemptions. The Proposer also must include a brief description that sets out the reasons for exemption from disclosure. Each stated exemption must include a citation to supporting legal authority, including statutory authority or case law, to support exemption from the Public Records Act. Requested exemptions that do not meet the requirements of this section will not be considered.

The County will use reasonable means to ensure that such information is safeguarded but will not be held liable for inadvertent disclosure of the information. Proposals marked "Confidential" in their entirety will not be honored, and the County might not deny public disclosure of any portion of Proposals so marked.

By submitting a Proposal with portions identified in Attachment I as "Confidential," Proposer represents that it has a good faith belief that such portions are exempt from disclosure under the California Public Records Act. Proposer may be requested to obtain legal protection from disclosure should a Public Records Act request be received. In the event the County does not disclose the information marked "Confidential," Proposer agrees to reimburse the County for, and to indemnify, defend (with counsel approved by County) and hold harmless the County, its officers, employees, agents, and volunteers from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses, including without limitation, attorneys' fees, expenses and court costs of any nature arising from or relating to the County's non-disclosure of any such designated portions of a Proposal.

#### **J. Employment of Former County Officials**

Information must be provided in Attachment G regarding former County Administrative Officials (as defined below) who are employed by or represent Proposer. The information provided must include a list of former County Administrative Officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of Proposer and should also include the employment and/or representative capacity and the dates these individuals began employment with or representation of Proposer. For purposes of this section, "County Administrative Official" is defined as a member of the Board of Supervisors or such member's staff, Chief Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

Failure to provide this information may result in the Proposal being deemed non-responsive.

#### **K. Disclosure of Criminal and Civil Proceedings**

The County reserves the right to request the information described herein from the Proposer selected for Contract award. Failure to provide the information may result in a disqualification from the selection process and no award of Contract to the Proposer. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The selected Proposer may also be asked to provide information to clarify initial responses. Negative information provided or discovered may result in disqualification from the selection process and no award of Contract.

The selected Proposer may be asked whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Proposer will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the selected Proposer may also be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Proposer will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

**L. Debarment and Suspension; California Secretary of State Business Entity Registration.**

Proposer certifies in Attachment D that neither it nor its principals or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See Attachment D and the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Proposer also certifies in Attachment D that if it or any of the subcontractors listed in the Proposal are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**M. Unsatisfactory Performance**

Proposer affirms that it has no record of unsatisfactory performance with the County in the **twenty-four (24) month period immediately preceding the date of issuance of this RFP.**

**N. Final Authority**

The final authority to award a contract(s) as a result of this RFP rests solely with the County Board of Supervisors, or as delegated by the Board of Supervisors.

**V. SCOPE OF WORK**

**A. BACKGROUND INFORMATION**

The Department of Community Development and Housing has funded the rehabilitation and new construction of 2,193 restricted affordable units within 60 developments throughout San Bernardino County. Developments completed have utilized a combination of funding sources, include but not limited to conventional financing HOME, NSP, MRB, LIHTC, SNHP, MSHA, NPLH, VASH, RDA, Section 8, etc. The affordability covenants that govern the restricted units require annual certifications and monitoring to ensure compliance with regulatory requirements, income and rent limits, and applicable property standards during the applicable affordability period.

Due to the current COVID-19 situation the County has postponed all scheduled site inspections through at least September 30, 2021. The waiver is applicable to ongoing periodic inspections and does not waive the requirement to perform initial inspections of rental properties upon completion of construction or rehabilitation. Within 120 days of the end of this waiver period, the County must physically inspect units

that would have been subject to on-going inspections during the waiver period. The waiver is also applicable to on-site reviews to determine a HOME rental project's compliance with rent and income requirements if the project owner is unable to make documentation available electronically. The waiver period may be extended by HUD, however, as of the date of this RFP no extensions have been granted.

Additionally, the County is utilizing HDS Multifamily Management Suite (HDS) to assist in managing tenant and unit-based compliance and run agency-defined compliance tests. This will allow the County to track information related to move-ins/move-outs, tenant income certifications, annual re-certification, unit transfers, interims, IRS compliance, HUD limits, and unique agency restrictions. The Multifamily Compliance tests include agency restrictions, tax credit tests, HOME tests, various reports and forms. The Web Compliance module includes the NEW HDS LIHTC XML Export Tool for submitting the tenant data to HUD annually, in the required format.

The County wishes to implement the Web Compliance module to the HDS Compliance Suite. Web Compliance allows property managers to login on the web and enter data for compliance and other reporting on projects, buildings, tenants, and units. HDS partners with various property management software vendors and the National Affordable Housing Management Association (NAHMA) to provide a standard interface for the importing of certification information directly from the property management software, thus, eliminating the need for additional work or data entry by the property managers.

## **B. PROJECT DESCRIPTION**

1. The County is looking for experts in this high specialized field to provide adequate guidance and information on highly technical subjects. The County seeks the knowledge of affordable housing compliance and compliance software experts to provide framework, policies and procedures, and delivery of efficient occupancy monitoring services to adhere to program rules and guidelines that are mandated with each federal, stated, or local financing program.
2. Deliverables/Requirements:
  - a. Create an annual timeline/schedule for onsite monitoring. The timeline will incorporate all noticing requirements as dictated by the project's respective funding source(s) (i.e. HOME, NSP, etc.)
  - b. Within the above-mentioned timeline/schedule (B 2(a)) create a schedule incorporating a priority to inspect the properties postponed due to the current COVID situation to be monitored within 120 from September 31, 2021.
  - c. As predicated by the established monitoring schedule reference above in section 2(a), annually collect various monitoring documents and certifications from the owner/manager of each multifamily property in the County portfolio.
  - d. As predicated by the established monitoring schedule reference above in section 2(a), conduct on-site visits as mandated by all applicable regulations and do follow-up on non-compliant properties. During site visits, the proposer will be expected to comply with all applicable regulations for conducting on-site review, including, but not limited to, reviewing the management plan, affirmative marketing plan, tenant selection plan, waiting list, copies of initial tenant leases and mandatory lease addendums, income source documentation, rent and utility schedules, and other compliance documentation and tenant files.
  - e. Accurately review income source documentation for new and recertifying tenants of restricted units.
  - f. Maintain updated files, including electronic files, for each monitored project to document and track compliance. Issue notices, letters, and miscellaneous program correspondence and track notices sent.

- g. Provide technical assistance in evaluating other federal requirements including but not limited to the accessibility transition plans.
  - h. Proposer shall provide customer service to property owners and management by establishing and maintaining a good work relationship and provide training as needed.
  - i. Proposer shall work with the County staff to collect all required documentation and records to implement the web-based interface for compliance data entry and compliance reporting.
3. For the purposes of this proposal and projects subject to federal regulations, the County uses Part 5 definition of income determination contained in HUD regulations.

### C. ADDITIONAL REQUIREMENTS

Warranties, licensing, maintenance, change orders and modifications, extension or renewal, correction of performance deficiencies.

## VI. PROPOSAL SUBMISSION

### A. General

1. All interested and qualified Proposers are invited to submit a Proposal for consideration. Submission of a Proposal indicates that the Proposer has read and understands the entire RFP, including all appendixes, attachments, exhibits, schedules, and addenda (as applicable) and that all concerns regarding the RFP have been resolved.
2. Proposals must be received by the designated date and time. **All Proposers must register with the ePro system prior to the date and time to receive the proposal or they will be disqualified. Late or incomplete proposals will not be accepted.** Electronic response must be submitted through the San Bernardino County Electronic Procurement Network (ePro) <https://epro.sbcounty.gov/epro/>. System-related issues in ePro shall be directed to the Purchasing Department at (909) 387-2060. For procurement questions involving ePro, please contact the RFP Contact identified in Section I, Paragraph A - Purpose.
3. The Proposer acknowledges that its electronic signature is legally binding. Submittals in ePro will be opened from the system's encrypted lock box after the deadline and evaluated as stated in this RFP.
4. Proposals must be submitted in the format described below. Proposals are to be prepared in such a way as to provide a straightforward, concise description of capabilities to satisfy the requirements of this RFP.
5. Proposals must be completed in all respects as required in this section. A Proposal may not be considered if it is conditional or incomplete.

### B. Proposal Format

Responses to this RFP must be in the form of a Proposal package, which must be submitted in the following format:

#### 1. Presentation

Submit all copies of the Proposal on via electronic PDF format. Each page, including attachments, must be clearly and consecutively numbered.

#### 2. Cover Page

Use Attachment A as the cover page.

This form must be fully completed and signed by an authorized officer of the Proposer.

#### 3. Table of Contents

All pages of the Proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the Table of Contents.

**4. Statement of Certification**

Include the following on Attachment B:

- a. A statement that the offer made in the Proposal is firm and binding for nine (9) months from the Deadline for Proposals.
- b. A statement that all aspects of the Proposal, including cost, have been determined independently, without consultation with any other Proposer (competitor) for the purpose of restricting competition.
- c. A statement that all declarations in the Proposal and attachments are true and that this shall constitute a warranty, the falsity of which will entitle the County to pursue any remedy by law.
- d. A statement that the Proposer agrees that all aspects of the RFP and the Proposal submitted shall be binding if the Proposal is selected and a Contract awarded.
- e. A statement that the Proposer agrees to provide the County with any other information the County determines is necessary for an accurate determination of the Proposer's ability to perform the Services as proposed.
- f. A statement that the Proposer, if selected will comply with all applicable rules, laws and regulations.
- g. A statement that the Proposer has reviewed the RFP and General Contract Terms in their entirety and have no exceptions to any requirements, terms, or conditions, except as noted in Attachment H.

**5. Statement of Experience and Qualifications**

Include the following in this section of the Proposal:

- a. Business name of the Proposer and type of legal entity such as corporation, partnership, etc. If Proposer is a business entity that must be registered with the California Secretary of State, Proposer shall provide the County the entity number assigned to it by the Secretary of State.
- b. Number of years the Proposer has been in business under the present business name, as well as related prior business names.
- c. Statement that the Proposer does not have any commitments or potential commitments that may impact the Proposer's ability to perform the Contract, if awarded.

**6. Project Team Organization Chart**

Provide an organization chart illustrating the project team, and clearly show the organization of the team and the hierarchy of the members. It must include:

- a. Organizational framework for the proposed project team.
- b. Company name and staff name for each role identified in the chart.
- c. Resumes of key personnel, including qualifications, education, and project experience

**7. Proposal Description**

The Proposal should include the following:

- a. A brief synopsis of the Proposer's understanding of the County's needs, the Proposer's experience and how the Proposer plans to meet them.
- b. A detailed statement of the proposed Services.
- c. An explanation of any assumptions or constraints.

**8. Work Plan and Schedule**

Include the following:

- a. Summary of management/work plan for this Project.
- b. A sample of Proposer's monitoring procedures used.
- c. A portfolio/list of affordable housing projects and affordable housing funding sources, regulations and guidelines, Proposer is familiar/has experience monitoring.

d. Project schedule delineating proposed timeframe.

**9. Certification Regarding Debarment or Suspension**

Complete Attachment D

**10. Cost**

Complete proposed pricing on Attachment E.

**11. References**

Provide three (3) references from other entities, preferably public agencies, of same or similar size as the County, with whom you have established a contract on a project of this nature. Provide Contact Name, Address, Phone Number, and dates Services were provided on Attachment F.

**12. Former County Officials**

Complete Attachment G

**13. Exceptions to RFP**

Complete Attachment H.

**14. Public Records Act Exemptions**

Complete Attachment I – Public Records Act Exemptions if applicable.

**15. Indemnification and Insurance Requirements Affidavit**

Submit evidence of ability to insure as stated in Section X, Paragraph B – Indemnification and Insurance Requirements. Proposer must complete and submit Attachment J – Indemnification and Insurance Requirements Affidavit, and ensure the form is complete, including the signature from Proposer's insurance broker/agent.

**VII. EVALUATION**

Proposals will be subject to an Initial Review to confirm responsiveness, by determining whether each Proposal includes the stipulated content, required certifications or licensing, etc., and is presented in the required format, in order for the Proposal to advance for evaluation. Any reasonable person reviewing for responsiveness must be able to ascertain that the Proposal meets these requirements.

The evaluation process includes the following categories and may include additional specific criteria. Likewise, the listed considerations are possible considerations, and may not be the only factors involved in the evaluation.

**A. QUALIFICATIONS AND EXPERIENCE**

Weight: 35%

Considerations: Proposer background and reputation, qualifications of the project team, experience with local approval agencies, experience with publicly bid projects, experience with similar services and entities.

**C. TECHNICAL REVIEW**

Weight: 30%

Considerations: Statement of understanding of the County's needs, work plan, scheduling, technical specifications and functionality, quality control, training, adequacy of support staff and subcontractors, risk management, and value-added aspects.

**D. COST/REVENUE**

Weight: 30%

## **E. REFERENCES**

Weight: 5%

Considerations: Satisfactory performance of similar work, demonstrated knowledge and expertise, work product, quality of interactions, capability of assigned team members, likelihood of continued use, etc.

The County may, at its sole discretion, create a shortlist of Proposals for further evaluation; require an oral interview, presentation, or demonstration; and utilize outside experts to assist in the evaluation process; and/or issue a request for Best and Final Offer (BAFO) from one or more Proposers.

The County will establish an evaluation panel with responsibility for reviewing all Proposals and conducting the evaluation. A Facilitator will manage the integrity of the evaluation process and will not be a voting member of the evaluation panel. An initial meeting will be scheduled and held with the evaluation panel members, wherein the Facilitator will distribute all relevant documents to the evaluators including the RFP, evaluation worksheets for each Proposal, and written evaluation instructions.

After the initial meeting, evaluators will independently review and score the Proposals. The evaluation panel will then convene again to discuss the individual scores to resolve questions and to discuss the basis for individual scores, but not for the evaluators to agree upon scoring. At the end of this discussion, each evaluator will be given an option to revise his/her scores.

Evaluators will make independent determinations for scores, including review and understanding of any additional information obtained by the group discussion. In the event a score is revised, the evaluator will strike out the original score, document the new score, and provide comments to support the revision.

If clarifying information is needed at any point, the Facilitator will contact Proposer(s) to obtain the necessary information. The Facilitator will then provide the information to the evaluation panel electronically or verbally, as appropriate.

If the evaluation process includes components such as oral interviews, product demonstration, and/or site visits, the Facilitator will coordinate those with evaluators. Individual scoring and any subsequent evaluation panel meetings with respect to such components must be conducted.

Once all ratings are finalized and documented, the Facilitator will collect individual evaluation worksheets to create a final evaluation scoring worksheet.

## **VIII. NEGOTIATIONS AND NOTICE OF INTENT TO AWARD**

The County may require the potential Proposer(s) selected to participate in negotiations. This may include cost, technical, or other clarifications needed to make a decision.

### **A. Contract Negotiation**

After selection, negotiations may be conducted with the Proposer(s) of the highest-ranked Proposal(s). Negotiations, if held, shall be within the scope of work in the request for Proposals. If the contract negotiations take place in San Bernardino County, California, the Proposer will be responsible for its travel and per diem expenses of its personnel.

### **B. Failure to Negotiate**

If the selected Proposer:

1. Fails to provide the information required to begin negotiations in a timely manner; or
2. Fails to negotiate in good faith; or
3. Indicates it cannot perform the Contract within the budgeted funds available for the Services; or

4. If the Proposer and the County, after a good faith effort, simply cannot come to terms.

Then the County may terminate negotiations with the Proposer initially selected and commence negotiations with the next highest rated Proposer.

**C. Notice of Intent to Award () – Proposer Notification of Selection**

After the completion of Contract negotiations, a written or electronic Notice of Intent to Award (NOIA) and denial letters (or a copy of the NOIA) will be issued to all Proposers. The issuance date of the NOIA is the date the NOIA was delivered by email or into the care of the United States Postal Service for delivery to the Proposer.

**D. Award**

A Contract will be awarded based on a competitive selection of Proposals received. The contents of the Proposal of the successful Proposer will become contractual obligations and failure to accept these obligations in a Contract may result in cancellation of the award.

**IX. APPEAL AND AWARD**

In the event a dispute arises concerning the Proposal process prior to the award of the Contract, the Proposer raising the dispute shall submit a request for resolution in writing to the Purchasing Agent. Proposer may appeal the recommended award or denial of award (Protest), provided the Protest:

1. Is submitted in writing.
2. Is submitted within ten (10) calendar days of the issuance date of the NOIA.

A Protest can only be brought on the following grounds:

1. Failure of the County to follow the selection procedures and adhere to requirements specified in the RFP or any addenda or amendments.
2. Violation of conflict of interest as provided by California Government Code Section 87100 et seq.
3. Violation of State or Federal law.

Protests will not be accepted for any other reasons than those stated above. All Protests must be sent to:

Valerie Clay Interim Director  
San Bernardino County  
Purchasing Department  
777 E. Rialto Avenue  
San Bernardino, CA 92415-0760

Upon receipt of the formal Protest, the Purchasing Agent, or his/her designee, will attempt to resolve the Protest. A Protest shall be disallowed when, in the judgment of the Purchasing Agent it has been submitted: (1) as a delay tactic; (2) for the purpose of posturing the Proposer advantageously for future procurement; (3) in a form that deviates from the one prescribed; (4) without adequate factual basis or merit; or (5) in an untimely manner.

The Purchasing Agent shall make a decision concerning the appeal, and notify the Proposer submitting the Protest, within a reasonable timeframe prior to the tentatively scheduled date for awarding the Contract. The decision of the Purchasing Agent shall be deemed final.

Alternatively, at the Purchasing Agent's discretion, an Appeal Panel consisting of five (5) members appointed by the Purchasing Agent shall hear the Protest. The Proposer will be provided reasonable notice of the time, date, and location of the hearing. In the event a protesting Proposer does not appear at the Protest hearing as scheduled, the Protest will be disallowed.

The hearing is informal, in that it is not subject to the strict rules of evidence or procedure, and live witnesses, if any, will not be sworn. All relevant evidence is admissible, including hearsay. It will be up to the Appeal Panel members to consider the credibility of the evidence and the weight to give it.

The Panel will determine by at least three (3) affirmative votes: 1) whether the Protest was submitted timely; 2) whether the Protest is based on at least one of the three designated grounds identified above; and 3) whether the grounds on which the Protest are based have been substantiated.

If any of the grounds are determined to be valid, the Panel will also decide if the valid portion of the Protest has so tainted the RFP process that it is unfair to the Proposer or whether the valid grounds for the Protest are in the nature of harmless error and that the RFP process was fair to the Proposer. The Panel will not re-evaluate the Proposals.

The Purchasing Agent shall notify the Proposer making the Protest of the decision, within a reasonable timeframe prior to the tentatively scheduled date for awarding the Contract. The decision of the Appeal Panel shall be deemed final. If the Contract must be approved by the Board, after receiving a decision from the Purchasing Agent or Appeal Panel, the Proposer may then present its Protest to the Clerk of the Board of Supervisors for the Board's review and decision. The Proposer must file its written Protest with the Clerk of the Board or provide a verbal Protest (typically limited to three minutes) prior to the Board making a decision on the Contract. Any decision of the Board shall be deemed final.

A Proposer protesting the results of any of the processes described herein must follow the procedures set forth. By submitting a "Letter of Intent to Protest", the Proposer has agreed that the protest procedures herein shall precede any action in a judicial or quasi-judicial tribunal regarding this Proposal. Protests that do not follow these procedures shall not be considered. The protest procedures constitute the sole administrative remedy available to the Proposer under this RFP. Upon exhaustion of this remedy no additional recourse is available.

## **X. TERMS AND CONDITIONS**

The selected Proposer will be required to enter into a formal Contract with the County. This RFP sets forth some of the general provisions which will be included in the final Contract. In submitting a response to this RFP, Proposer will be deemed to have agreed to each clause unless the Proposal identifies an objection and County agrees to a change of language in writing. All objections to any Terms and Conditions must be listed on Attachment H – Exceptions to RFP, or any exception thereto shall be waived

### **A. General**

#### **1. Contract Amendments**

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

#### **2. Contract Assignability**

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

#### **3. Attorney Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under the Indemnification and Insurance Requirements.

**4. Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing. If requested by the County, Contractor shall provide the results of the background check of each individual to verify that the individual meets Contractor's standards for employment. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

**5. Change of Address**

Contractor shall notify the County in writing of any change in mailing address within ten (10) business days of the change.

**6. Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**7. Compliance with County Policy**

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all additions and modifications to each of subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives, and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

**8. Confidentiality.**

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

**9. Primary Point of Contact**

The Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

**10. County Representative**

The *Community Development and Housing Deputy Director* or his/her designee shall represent the County in all matters pertaining to the Services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

**11. Damage to County Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damage to County vehicles, facilities, buildings, or grounds caused by the willful or negligent acts of Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. For such repairs, the Contractor, shall repay all costs incurred by the County, by cash payment upon demand or County may deduct such costs from any amounts due to the Contractor from the County, as determined at County's sole discretion

**12. Debarment and Suspension**

The Contractor certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**13. Drug and Alcohol-Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- a. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- c. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

**14. Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**15. Employment Discrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**16. Environmental Requirements**

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractors must also be able to report on environmentally preferable goods used in the provision of Services to the County, utilizing a County approved form.

**17. Improper Influence**

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

**18. Improper Consideration**

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the Proposal and award process. This prohibition shall apply to any amendment, extension, or evaluation process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee, or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative

Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

**19. Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**20. Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**21. Licenses, Permits, and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules, and regulations. The Contractor shall maintain these licenses, permits, and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits, and/or certifications. Failure to maintain required licenses, permits, and certifications may result in immediate termination of this Contract.

**22. Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

**23. Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

**24. Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**25. Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**26. Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

27. \*Reserved.

**28. Air, Water Pollution Control, Safety and Health**

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**29. Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

**30. Release of Information**

No news releases, advertisements, public announcements or photographs arising out of this the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

**31. Representation of the County**

In the performance of the Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County.

**32. Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**33. Subcontracting**

Contractor agrees not to enter into any subcontracting Contracts for work contemplated under the Contract without first obtaining written approval from the County. Any subcontractor shall be subject to the same terms and conditions as Contractor. Contractor shall be fully responsible for the performance and payments of any subcontractor's contract.

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Paragraph B of this Section X. All approved subcontractors shall be subject to the provision of this contract applicable to Contractor Personnel, including removal pursuant to subsection A.5 of this Section X.

For any subcontractor, Contractor shall:

- 34.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 34.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 34.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Section V, Scope of Work.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

**34. Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

**35. Termination for Convenience**

The County and the Contractor each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**36. Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**37. Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

**38. Fiscal Provisions**

- a. The maximum amount of reimbursement/payment under this Contract shall be subject to availability of funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's Services and expenses incurred in the performance hereof, including travel and per diem.
- b. Contractor shall provide County itemized monthly invoices, in arrears, and in a format acceptable to the County for Services performed under this Contract within twenty (20) days of the end of the previous month. The County shall make payment to Contractor within sixty (60) working days after receipt of invoice or the resolution of any billing dispute.
- c. Contractor shall accept all payments from County via electronic fund transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- d. County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay

for any State or local sales or use taxes on the Services rendered or equipment and/or parts supplied to the County pursuant to the Contract.

- e. Costs for Services under the terms of this Contract shall be incurred during the Contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.

## **B. Indemnification and Insurance Requirements**

### **1. Indemnification**

**For contracts involving technology, software or other intellectual property, the following paragraph applies:** Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any Goods or Services. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Contractor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Contractor of its obligations only if and to the extent that such delay or failure materially prejudices Contractor's ability to defend such lawsuit or claim. County will give Contractor sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Contractor may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the Goods or Services that are the subject of the claim. In the event that Contractor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Contractor, then Contractor shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Contractor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Contractor's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in Contractor's opinion, any goods or Services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Contractor may, at its option: (i) procure for County the right to continue using the goods or receiving the Services; (ii) replace or modify the goods or Services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Contractor, County shall cease use of the goods or Services upon written notice from Contractor, and Contractor shall provide County with a pro-rata refund of the unearned fees paid by County to Contractor for such goods or Services.

Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers (Indemnitees) from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

### **Additional Insured**

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

#### **Waiver of Subrogation Rights**

The Contractor shall require the carriers of the required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, Contractors, and Subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

#### **Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

#### **Severability of Interests**

Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and County or between the County and any other insured or additional insured under the policy.

#### **Proof of Coverage**

Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of Services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of Services hereunder until the completion of such Services. Within fifteen (15) days of the commencement of this Contract, Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

#### **Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

#### **Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

#### **Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor(s)/Applicant(s) will be reduced to pay for County purchased insurance.

#### **Insurance Review**

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interest of the County. In addition, if Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change these insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

## 2. **Insurance Specifications**

Contractor agrees to provide insurance set forth in accordance with the requirements herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement, or endorse the existing coverage to do so.

Without in any way affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

### **Workers' Compensation/Employers Liability**

A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with two hundred and fifty thousand dollar (\$250,000) limits, covering all persons, including volunteers, providing Services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

### **Commercial/General Liability Insurance**

Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations)
- d. Explosion, collapse and underground hazards.
- e. Personal Injury
- f. Contractual liability

- g. \$2,000,000 general aggregate limit

**Automobile Liability Insurance**

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Contractor is transporting one or more non-employee passengers in performance of Services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**Umbrella Liability Insurance**

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**Professional Services Requirements**

**Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits

or

**Errors and Omissions Liability Insurance** with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

**Directors and Officers Insurance** coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after Contract completion.

**Abuse/Molestation Insurance** – Contractor shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) with a two million dollars (\$2,000,000) aggregate limit.

**C. Right to Monitor and Audit**

**1. Right to Monitor**

The County, State and Federal governments shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have the absolute right to monitor the performance of Contractor in the delivery of Services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring and evaluation of this Contract and comply with any and all reporting requirements established by the County. Contractor shall repay to County within thirty (30) days of receipt of audit findings any reimbursements made by County to Contractor that are determined by subsequent audit to be unallowable pursuant to the terms of this Contract or by law.

**2. Records**

Contractor shall maintain all records and books pertaining to the delivery of Services under this Contract and demonstrate accountability for Contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of Contract.

All records relating to the Contractor's personnel, Contractors, Subcontractors, Service/Scope of Work, and expenses pertaining to this Contract shall be kept in generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue, and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

All records pertaining to Services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under the Agreement or until all pending County, State and Federal audits are completed, whichever is later.

**D. Correction of Performance Deficiencies**

1. In the event of a problem or potential problem that could impact the quality or quantity of work, Services, or the level of performance under this Contract, Contractor shall notify the County within one (1) working day, in writing and by telephone.
2. Failure by Contractor to comply with any of the provisions, covenants, requirements, or conditions of this Contract shall be a material breach of this Contract.
3. Contractor's Primary Contact and County Representative shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of this Contract. If these representatives are unable to resolve a dispute, controversy or claim with ten (10) days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review.

If the Primary Contact and County Representative are not successful in resolving the dispute, negotiations shall be conducted by the Chief Executive Officer, or designee and the highest-level executive for Contractor. If these representatives are unable to resolve the dispute within ten (10) days after the representatives have commenced negotiations, or 20 days have passed since the initial request for negotiations at this level, the Parties may agree in writing to submit the dispute to mediation.

4. In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract.
  - a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County.
  - b. Withhold funds pending duration of the breach.
  - c. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery.
  - d. Offset against any monies billed by Contractor but yet unpaid by the County.
  - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

5. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

**ATTACHMENT A – COVER PAGE**

**Use this checklist to ensure that all items requested have been included.**

Items Completed		Page (s)
1.	Attachment A – Cover Page	
2.	Attachment B – Statement of Certification	
3.	Attachment C – Licenses, Permits, and/or Certifications	
4.	Attachment D – Certification Regarding Debarment or Suspension; California Secretary of State Business Entity Registration	
5.	Attachment E – Cost	
6.	Attachment F – References	
7.	Attachment G – Employment of Former County Officials	
8.	Attachment H – Exceptions to RFP	
9.	Attachment I – Public Records Act Exemptions	
10.	Attachment J – Indemnification and Insurance Requirements Affidavit	
11.	<i>*if applicable</i> Attachment K – Business Associate Agreement	
12.	<i>*if applicable</i> Financials (Two Years)	

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

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

Telephone No.: ( ) \_\_\_\_\_ FAX No.: ( ) \_\_\_\_\_

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

Federal Tax ID: \_\_\_\_\_

RFP Contact: \_\_\_\_\_

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

Title of Authorized Representative: \_\_\_\_\_

**By signing below, the individual acknowledges that he/she has the authority to bind the Proposer to the terms of the Proposal. The individual further acknowledges that he/she has read and understands the RFP, the contents of the Proposal and the Attachments, and attests to the accuracy of the information submitted therein.**

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

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

**ATTACHMENT B  
STATEMENT OF CERTIFICATION**

The following statements are incorporated in our response to San Bernardino County.

	<b>Statement</b>	<b>Agree (initial)</b>	<b>Agree with qualification (initial and attach explanation)</b>
1.	The offer made in the Proposal is firm and binding for nine (9) months from the date the Proposal is opened.		
2.	All aspects of the Proposal, including cost, have been determined independently, without consultation with any other Proposer or competitor for the purpose of restricting competition.		
3.	All declarations in the Proposal and attachments are true and that this shall constitute a warranty, the falsity of which will entitle the County to pursue any remedy by law.		
4.	Proposer agrees that all aspects of the RFP and the Proposal submitted shall be binding if the Proposal is selected and a Contract awarded.		
5.	Proposer agrees to provide the County with any other information the County determines is necessary for an accurate determination of the Proposer's ability to perform the Services as proposed.		
6.	Proposer, if selected will comply with all applicable rules, laws and regulations.		
7.	The RFP has been reviewed in its entirety and Proposer has no exceptions to any requirements, terms, or conditions, except as noted in Attachment H.		



---

## ATTACHMENT D

### CERTIFICATION REGARDING DEBARMENT OR SUSPENSION; CALIFORNIA SECRETARY OF STATE BUSINESS ENTITY REGISTRATION

In compliance with contracts and grants Contracts applicable under the U.S. Federal Awards Program, the following certification is required by all Proposers submitting a response to this RFP:

1. The Proposer certifies, to the best of its knowledge and belief, that neither the Proposer nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or non-procurement programs, or are individually or collectively listed as such in the United States General Services Administration's System for Award Management (SAM) website ([www.sam.gov](http://www.sam.gov)).
2. The Proposer certifies, to the best of its knowledge and belief, that neither any subcontractor listed in its Proposal, nor subcontractor's Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or non-procurement programs, or are individually or collectively listed as such in the United States General Services Administration's System for Award Management (SAM) website ([www.sam.gov](http://www.sam.gov)).
3. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
4. The Proposer shall provide immediate written notice to the Purchasing Agent if, at any time prior to award, the Proposer learns that this certification was erroneous when submitted or has become erroneous by reason of changes in circumstances.
5. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Proposer rendered an erroneous certification, in addition to other remedies available to the San Bernardino County government, the County may terminate the Contract resulting from this RFP for default.
6. Proposer affirms that neither it, nor any subcontractor listed in the Proposal, has any recent unsatisfactory performance with the County during the past twenty-four (24) months at a minimum.
7. Proposer also certifies that if it or any of the subcontractors listed in the Proposal are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.



**ATTACHMENT F - REFERENCES**

Name of Agency	Contact Name/Address	Phone Number	Dates services provided (from/through*)

Provide a minimum of three (3) customer references Proposer has contracted with, providing the same service as requested in this RFP.

\*Enter "**Present**" if still providing the services (Example: 10/08/13 - present).



---

**ATTACHMENT H – EXCEPTIONS TO RFP**

CONTRACTOR NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE# (    ) \_\_\_\_\_ FAX # (    ) \_\_\_\_\_

I have reviewed the RFP in its entirety and have the following exceptions: (Please identify and list your exceptions by indicating RFP, the Section or Paragraph number, and Page number, as applicable. Be specific about your objections to content, language, or omissions. Add as many pages as required.)

---

**ATTACHMENT I – PUBLIC RECORDS ACT EXEMPTIONS**

PROPOSER NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE# (    ) \_\_\_\_\_ FAX # (    ) \_\_\_\_\_

Proposer requests that specific portions of the contents of this Proposal be held confidential and not subject to public disclosure pursuant to the Public Records Act. The specific portions are detailed below: (Please identify and list your exemptions by indicating the Section or Paragraph number, and Page number, of the Proposal where the content is contained.) **Each stated exemption must include a citation to supporting legal authority, including statutory authority or case law, to support exemption from the Public Records Act. Requested exemptions that does not meet the requirements of this section will not be considered.**

---

**ATTACHMENT J - INDEMNIFICATION AND INSURANCE REQUIREMENTS AFFIDAVIT**

**THE PROPOSER'S INSURANCE COMPANY(S) OR INSURANCE AGENT MUST COMPLETE THIS FORM  
AND  
THE PROPOSER MUST SUBMIT THIS COMPLETED AFFIDAVIT WITH THE PROPOSAL.**

I, the undersigned (Please check one box)  underwriter  agent/broker, certify that I and the Proposer listed below have jointly reviewed the "Insurance Requirements" in this Request for Proposal (RFP). If the County of San Bernardino ("County") awards the Proposer the Contract for this project, I will be able—within fourteen (14) calendar days after the Proposer is notified of the Contract's award—to furnish the County with all the required, insurance certificate(s) and endorsement(s) as specified in Section X, Paragraph B. Indemnification and Insurance Requirements.

\_\_\_\_\_  
Insurance Broker / Agency Name \_\_\_\_\_  
Date

\_\_\_\_\_  
Insurance Broker's / Agent's Name (Printed) \_\_\_\_\_  
Insurance Broker's / Agent's Name (signature)

\_\_\_\_\_  
Address City State Zip Code

\_\_\_\_\_  
Telephone Number FAX Number Email Address

---

\_\_\_\_\_  
Proposer's Name

---

\_\_\_\_\_  
County RFP Name and Number

---

***Below State the Name of Insurance Company Providing Coverage:***

DO NOT write "Will Provide," "To Be Determined," "When required," or similar phrases.

\_\_\_\_\_  
Commercial General Liability

\_\_\_\_\_  
Automobile Liability

\_\_\_\_\_  
Workers' Compensation Liability

\_\_\_\_\_  
Professional Liability

\_\_\_\_\_  
Pollution Liability

\_\_\_\_\_  
Cyber Liability

\_\_\_\_\_  
Sexual Abuse Liability

---

[NOTE TO PROPOSER: See Section X, Paragraph B. Indemnification and Insurance Requirements, for details on the basic requirements and types of insurance for this agreement.]

NOTE TO THE UNDERWRITER / AGENT-BROKER: If the insurance forms that the Proposer submits to the County do not fully comply with the Insurance Requirements, and/or if the Proposer fails to submit the forms within the 14-day time limit, the County may: (1) declare the Proposer's Proposal non-responsive, and (2) award the Contract to the next highest ranked Proposer.

If you have any questions about the Insurance Requirements, please contact Mr. Rafael Viteri, County of San Bernardino - Risk Management Department, at (909) 386-8730 or via e-mail [rviteri@rm.sbcounty.gov](mailto:rviteri@rm.sbcounty.gov) (Please provide name of RFP with your email question(s)).

**EXHIBIT A**

**Multi-Family Affordable Property Portfolio**

**EXHIBIT B**

**Map of San Bernardino County**

