



Retrofit Grants Program Contractor Agreement Addendum



For Services Performed Under a Federal Award

BETWEEN

(“Grantee”)

AND

(“Contractor”)

- 1. Licensing & Qualifications:** Contractor confirms that it is fully licensed and not listed on the government wide exclusions in the System for Award Management¹, and qualified to perform the construction of seismic upgrades under this contract per approved engineered plans and as outlined in the Retrofit Grants Program Technical Guidelines.
- 2. Equal Opportunity Clause:** All providers of construction services agree to abide by 41 CFR §§ 60-1 to -45. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.
- 3. Contract Parties:** Neither the City of Berkeley, nor the Federal Emergency Management Agency (FEMA), nor the California Governor’s Office of Emergency Services (Cal OES) is a party to any contract for design or construction services eligible for reimbursement under the Retrofit Grants Program, and neither the City, no FEMA, nor Cal OES is subject to obligations or liabilities that may result from the contract terms.

PROJECT ASSURANCES FOR FEDERAL ASSISTANCE HAZARD MITIGATION GRANTS

- 4. Records Review:** Contractor will give the City, the Comptroller General of the United States, Federal Office of Inspector General 2 CFR § 200.336, and if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

¹ SAM Website: <https://sam.gov/SAM/pages/public/searchRecords/search.jsf>

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- 5. Approval of Construction Plans:** Contractor will comply with the requirements of the assistance-awarding agency with regard to the drafting, review and approval of construction plans and specifications.
- 6. Engineering Supervision:** Contractor will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications and will furnish progress reports and such other information as may be required by the City or state.
- 7. Project Completion:** Contractor will initiate and complete the work within the applicable time frame after receipt of approval of the City.
- 8. Lead-Based Paint:** Contractor will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801 et seq.), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- 9. Nondiscrimination:** Contractor hereby agrees to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Chapter 13.26 as amended from time to time. In the performance of this Contract, Contractor agrees as follows: (a) Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS. (b) Contractor shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this nondiscrimination provision. In addition, Contractor shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.
- 10. Environmental Standards:** Contractor will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.O. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 et seq.); (f) conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.O. 93-205).
- 11. Wild and Scenic Rivers Act:** Contractor will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

Contractor's Initials

- 12. Section 106 of the National Historic Preservation Act:** Contractor will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-l et seq.).
- 13. Conflict of Interest:** Contractor will disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with 2 C.F.R. § 200.112.
- 14. Compliance with Laws and Policies:** Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies for services provided under the Retrofit Grants Program.
- 15. Disclosure of Violations of Criminal Law:** Contractor shall disclose, in a timely manner, in writing to the City all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award 2 C.F.R. § 200.113. Failure to make required disclosures can result in any of the remedies described in 2 C.F.R. § 200.338 Remedies for noncompliance, including suspension or debarment.
- 16. Debarment and Suspension:** Contractor will not make any award or permit any award (subaward or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension".

ADDITIONAL FEDERAL REQUIREMENTS

- 17. Solid Waste Disposal Act:** Contractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements include making maximum use of products containing recovered materials that are designated at the EPA's website at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>, unless the product cannot be acquired i) competitively within a timeframe providing for compliance with the contract performance schedule; ii) meeting contract performance requirements; or iii) at a reasonable price.
- 18. False Claims and Statements:** Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this contract.
- 19. Federal Logos:** Contractor shall not use Department of Homeland Security (DHS) or FEMA seals, logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Contractor's Initials

CONTACTS EXCEEDING \$100,000

21. Contracts in excess of \$100,000 that involve employment of mechanics or laborers must comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3701 et seq.

- a. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
- b. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c. Withholding for unpaid wages and liquidated damages.** The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- d. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

Contractor's Initials

21. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non- Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

CONTRACTS EXCEEDING \$250,000 (SIMPLIFIED ACQUISITION THRESHOLD)

- 22. This agreement is subject to bonding requirements in accordance with 2 C.F.R. Part 200.325 for contracts or subcontracts exceeding the Simplified Acquisition Threshold of \$250,000.
- 23. Contracts exceeding the Simplified Acquisition Threshold of \$250,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 24. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

Name of Contractor (Please print)

Signature of Contractor

Company Name

Date