



**RFP# 1805-091217**

**REQUEST FOR PROPOSALS FOR  
AIRPORT INFRASTRUCTURE PLAN  
AVIATION CONSULTING SERVICES**

Proposals must be received no later than:

**Thursday, September 28, 2017 @ 4:00 PM, PST**

Please send proposals to the office of:

Hayward Executive Airport  
20301 Skywest Drive  
Hayward, CA 94541  
Attention: Doug McNeele



**REQUEST FOR PROPOSAL (RFP)  
AIRPORT INFRASTRUCTURE PLAN  
AVIATION CONSULTING SERVICES**

The City of Hayward (City) is seeking proposals from qualified aviation consultants for the preparation of an Airport Infrastructure Plan at Hayward Executive Airport.

**SECTION I - INTRODUCTION**

**A. PROJECT DESCRIPTION**

The purpose of this project is to determine the best and highest use for certain existing buildings at Hayward Executive Airport in Hayward, California. These buildings include an air traffic control tower and nineteen hangar buildings.

**B. INFORMATION TO BE PROVIDED TO CONSULTANT**

The following documents and material are available for use by the consultant:

1. The current Airport Layout Plan (ALP) in AUTOCAD 2010 format.
2. Access to the Airport Master Plan study completed in 2000.
3. Access to the Airport Layout Plan Update completed in 2011.
4. Access to existing aerial photos of the airport.

**SECTION II - SCOPE OF SERVICES**

This project consists of three tasks, including a physical assessment of each building to determine the structural condition and remaining useful life; a forecast of the volume and type of air traffic anticipated at the airport in the next ten years; and a recommendation for the improvement or replacement of each building. If improvement is recommended, the specific nature of the improvements shall be outlined. If replacement is recommended, the best option(s) for the type of replacement structure shall be made based upon the results of the air traffic forecast, anticipated economic conditions, and future need.

The scope of work shall include undertaking all necessary data collection and analysis for the tasks identified below. The consultant is expected to review the scope in this proposal, and incorporate their expertise and experience in proposing a method or approach that will help the airport achieve the objectives of this project. The Consultant shall be familiar with and be responsible for performing the necessary tasks.

The following sections detail each required task and deliverable.

## **TASK 1: CONDUCT PHYSICAL ASSESSMENT**

The existing buildings vary in age and condition. Construction of the air traffic control building was completed in 1961. Construction of the nineteen hangar buildings was completed in phases. The oldest building was built in approximately 1960. Each of the buildings is currently occupied, and maintenance is performed by airport staff. Although the T-hangar buildings are presently in serviceable condition, known issues in some of them include roof leaks and difficulties in the operation of the sliding doors. Known issues in the air traffic control building include intermittent operation of the HVAC system and occasional fogging of certain glass panes in the tower cab.

The consultant shall provide qualified and experienced personnel to evaluate the condition of each building. The evaluation shall include, at a minimum, the foundation, structural members, interior and exterior walls, roof, and electrical components. The air traffic control tower includes, in addition, plumbing and HVAC. Airport staff will escort the evaluator(s) and provide access to all buildings during normal business hours, by prior arrangement.

### **Deliverable:**

The Consultant shall provide a report, which shall include a building inventory, and findings of each building assessment. This report must include tables and maps or other graphics as necessary.

## **TASK 2: PREPARE AIR TRAFFIC FORECAST**

To assist in the planning process for future facility needs, the City requires an air traffic forecast. This forecast will define existing and future levels of aviation demand. At general aviation airports such as Hayward Executive Airport, the number of based aircraft and the number of annual aircraft operations are the primary indicators of aviation demand. The City is requesting a ten-year forecast period. This study shall be prepared with individuals experienced in aviation forecasting, and it will take into consideration historical information, recent developments, and current aviation trends to forecast the anticipated changes in based aircraft and annual aircraft operations.

### **Deliverable:**

The Consultant shall provide a detailed air traffic forecast report, which shall at minimum shall include an executive summary and detailed discussions of the technical methodology and assumptions used to develop the forecast.

## **TASK 3: PREPARE RECOMMENDATIONS REPORT**

Based on the results of the physical assessment and air traffic forecast, the consultant shall make recommendations for the best and highest use of the facilities. The airport current serves a variety of aircraft types, and tenants use aircraft for business, recreation, and other purposes. The airport would like to maintain facilities for use by a cross-section of general aviation users, but decision makers will be guided in part by the recommendations made. Accordingly, the City is requesting specificity. If existing hangars are to remain, the recommendations shall

list all the improvements in order of priority, the justification, and a cost estimate for each improvement. Similarly, if there is a recommendation to remove and replace facilities, a priority order, justification, and cost estimate shall be provided. The City also requests a detailed description of the replacement facility, including but not limited to, interior dimensions, ceiling height, type of construction, anticipated use, and the aircraft that may be accommodated.

**Deliverable:**

The Consultant shall provide a report that presents detailed recommendations for the highest and best use of the airport facilities and analysis of the scenarios outlined above.

**C. ADDITIONAL CONSIDERATIONS**

**1. Meetings and Reporting**

Up to two public meetings and two City Council meetings shall be assumed. The consultant shall prepare the meeting materials, including exhibits, for public meetings. It is anticipated that renderings or other visual representations of the various roadway segments will be required. All exhibits should be prepared in a manner such that “lay people” will understand what is being proposed. All materials for public meetings, especially any materials for public presentations such as PowerPoint and renderings, will be reviewed and approved by City staff prior to their use in the public meetings.

**2. Minimum Final Deliverables**

A minimum of six (6) hard copies each of all preliminary work, and the documents shall be submitted to staff during the review stage of the project. For final documents, one copy each shall be provided in electronic and hard copy formats for all project reports, studies, specifications, and drawings. Electronic copies for text documents and reports shall be provided in Microsoft Office 2010 or later version. Electronic copies for all drawings shall be in AutoCAD 2010 or later version.

**SECTION III - PROPOSAL REQUIREMENTS**

**D. PROPOSAL CONTENT**

Proposals shall be brief but complete. Consultants are advised to avoid submitting superfluous materials that do not address the specific requirements of the RFP or is covered elsewhere in the consultant’s proposal. Proposals submitted shall cover the following items. Additional material may be included in appendices to the proposal. However, elaborate brochures or other presentation material not specifically related to the scope of work are not desired.

The Proposal should be organized in the following sequence:

### **(1) Executive Summary**

Describe the Consultant team, the commitment of the team and its key staff to the project, the team's commitment to Quality Assurance/Quality Control (QA/QC) and the team's special or unique qualifications or experience in project definition, project delivery, project budget monitoring and/or adherence to project schedule.

### **(2) Project Understanding**

Demonstrate the Consultant team's understanding of the existing project conditions and issues. Note any project development issues that were not either addressed with this proposal or the Consultant team believes would impact the project schedule or project cost. The Consultant team should provide techniques and specific cost saving measures to reduce the construction cost, without compromising the integrity of the project purpose and need.

### **(3) Technical Approach**

Provide a detailed explanation of the approach for completing the work, addressing each of the tasks above and discussing the deliverables.

### **(4) Proposed Staffing Plan**

Designate the Principal in Charge and Project Manager throughout the duration of the contract. The Project Manager (the key contact) should be readily available for meetings, etc. The proposal should describe the individuals and their roles on the team. The proposal should include a brief resume describing similar projects on which they have been involved and their role on that project, their availability over the duration of this project, and a description of the benefits the person brings to the team. Indicate recent, relevant experience and references on similar projects where a similar role was performed. Full resumes may be included in an appendix. Proposals shall clearly establish principal team member firms and subconsultants. An organization chart shall be included. Any substitution of key staff during the project will require approval from the City.

It is the policy of the City of Hayward that Disadvantaged Business Enterprises (DBE) and Women Owned Business Enterprises (WBE) should have a full and equitable opportunity to participate in the performance of professional service contracts. The utilization of DBE/WBE as subcontractors is strongly encouraged and is one of the items considered in the Consultant selection process.

### **(5) Estimated Hours and Schedule**

The Consultant must provide the hourly rate for each participating staff person and must estimate the hours for all activities and tasks discussed above, with cost summaries by task and the project overall. The hours should be further divided by the Prime Consultant's staff time and the staff time of sub-consultants. The Consultant may include additional tasks if relevant. A total proposed "Not to Exceed Fee" shall be provided. The consultant shall provide a timeline for completion of the project. Estimated milestone and deliverable dates shall be provided.

**(6) Similar Experience of the Consultant Team**

Provide descriptions of at least one (1) project similar in size and complexity completed in the last seven (7) years including: the client's name and address; the name of the client contact person to be used as a reference including a current telephone number; the estimated value of the project; the number of amendments to project and the percentage increase over the base contract; and a statement on the Consultant's team adherence to the budget and schedule.

**(7) Comments on the City's Sample Professional Services Agreement**

A sample City Professional Services Contract is shown in Attachment A.

Please provide a statement of your firm's acceptance of the City's insurance and indemnification requirements, or any reservation that your firm has with the requirements. If no objections are expressed then City staff will conclude that the terms of the agreement are acceptable to the proposer.

**E. SUBMITTAL PROCEDURES, SELECTION CRITERIA AND SCHEDULE**

The Consultants are encouraged to promptly notify the City of Hayward in writing, of any apparent major inconsistencies, problems or ambiguities in the Scope of Services or this RFP. The request for information deadline is **Friday, September 15, 2017 by 4:00 p.m.** Any questions and requests for clarification/additional information shall be submitted to Doug McNeeley by e-mailing [douglas.mcneeley@hayward-ca.gov](mailto:douglas.mcneeley@hayward-ca.gov). If deemed necessary, the City will provide copies of the questions and answers to all prospective consultants.

**Submit three (3) hard copies and one (1) soft copy of the proposal to our office by 4:00 p.m. Thursday, September 28, 2017, to be considered for this project. Proposals shall be clearly marked: AIRPORT INFRASTRUCTURE PLAN. Responses to the RFP received after that time will be returned unopened. Postmark is not acceptable. Responses to the RFP should be submitted to:**

Hayward Executive Airport  
20301 Skywest Drive  
Hayward, CA 94541  
Attention: Doug McNeeley

Proposals shall be brief but complete. Consultants are advised to avoid submitting superfluous materials that do not address the specific requirements of the RFP or are covered elsewhere in the consultant's proposal. Proposals submitted shall cover the following items. Additional material may be included in appendices to the proposal. However, elaborate brochures or other presentation material not specifically related to the scope of work are not desired.

Proposals shall be signed by an officer authorized to execute a contract with the City and shall contain a statement to the effect that the proposal constitutes a firm offer for at least six months from the last day for receipt of proposals set forth in this RFP.

Proposals will be reviewed based on the following criteria (not necessarily in order)

- Qualifications of key staff
- Qualifications of team members
- Previous experience with similar projects
- Satisfaction of previous clients
- Team organization
- Project understanding and approach
- Specific ideas to control and contain project scope & cost
- Compliance with city DBE/WBE goals
- Proposal cost

The City may choose to invite one or more firms for an interview. In that event, final recommendations to the Council will be based on rankings established by the interview panel.

The following schedule is targeted for consultant selection:

Release RFP	August 29, 2017
RFI Deadline	September 15, 2017
Proposals due	September 28, 2017

Attachments:

Exhibit A: Sample of City Professional Services Agreement

***\*THIS DOCUMENT MUST BE COMPLETED, EXECUTED AND SUBMITTED WITH THE PROPOSAL FORM\****

THE REPRESENTATIVES MADE HEREIN ARE MADE UNDER PENALTY OF PERJURY

NO PROPOSAL IS VALID UNLESS SUBMITTED ON THIS FORM AND SIGNED BY AUTHORIZED AGENT FOR YOUR COMPANY.

SUBMITTED BY:

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_ ZIP: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

(Authorized Agent)

NAME: \_\_\_\_\_

(Please Print)

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

NOTE: If proposer is a corporation, the legal name of the corporation shall be set forth above, together with the signature of authorized officers or agents; if bidder is a partnership, the true name of the firm shall be set forth above, together with the signature of the partnership; and if bidder is an individual, his signature shall be placed above.

***\*THIS DOCUMENT MUST BE COMPLETED, EXECUTED AND SUBMITTED WITH THE BID FORM\****

**NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID.**

State of California )  
 ) ss.  
County of \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says that he or she is of \_\_\_\_\_ the party making the foregoing bid that the bid is not made in the interest of or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder as not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price of any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

**\*NO BID IS VALID UNLESS SIGNED BY THE PERSON MAKING THE BID\***

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF HAYWARD AND (**NAME OF Consultant**) \_\_\_\_\_

THIS AGREEMENT, dated for convenience this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, is by and between (**name of consultant**) \_\_\_\_\_, a [**insert here a description of the capacity of the contractor such as a sole proprietorship, a California corporation, or a limited partnership**] \_\_\_\_\_,

\_\_\_\_\_ ("Consultant") and the CITY OF HAYWARD, a public body of the State of California ("City");

RECITALS:

WHEREAS, Consultant is specially trained, experienced, and competent to perform the special services which will be required by this agreement; and

WHEREAS, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, Consultant and the City agree as follows:

AGREEMENT:

Scope of Service. Subject to the terms and conditions set forth in this agreement, Consultant shall provide to the City, the services described in Exhibit \_\_\_\_\_. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit \_\_\_\_\_.

Compensation. City hereby agrees to pay Consultant as provided in Exhibit \_\_\_\_\_. Total compensation for Consultant's services and expenses incurred pursuant to this agreement shall not exceed the sum of \$\_\_\_\_\_.

Effective Date and Term. The effective date of this agreement is \_\_\_\_\_] and it shall terminate no later than \_\_\_\_\_.

Independent Contractor Status. It is expressly understood and agreed by both parties that Consultant, while engaged in carrying out and complying with any of the terms and conditions of this agreement, is an independent contractor and not an employee of the City. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee of the City.

Billings. Consultant shall submit monthly bills to the City describing its services and costs provided during the previous month. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant's monthly bills shall include the following information to which such services or costs pertain: a brief description of services performed, the date the services were performed, the number of hours spent and by whom, and a brief description of any costs incurred, and the Consultant's signature. In no event shall Consultant submit any billing for an amount in excess of the maximum amount of compensation provided above.

Advice and Status Reporting. Consultant shall provide the City with timely advice of all significant developments arising during performance of its services hereunder orally or in writing.

Designation of Primary Provider of Services. This agreement contemplates the services of Consultant firm, [**Name, Name, and Name**] \_\_\_\_\_. The primary provider of the services called for by this agreement shall be [**insert here the name of the individual who will provide the services to the City**] \_\_\_\_\_, who shall not be replaced without the written consent of City's Director of Finance.

Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this agreement. In the event that City, in its sole discretion, at any time during the term of this agreement, desires the removal of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

Assignment and Subcontracting. It is recognized by the parties hereto that a substantial inducement to City for entering into this agreement was, and is, the professional reputation and competence of Consultant. Neither this agreement nor any interest therein may be assigned by Consultant without the prior written approval of City's Director of Finance. Consultant shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City's Director of Finance.

Insurance. On or before beginning any of the services or work called for by any term of this agreement,

Consultant, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the City the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor.

- (a) Workers' Compensation. Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by Consultant shall be provided with limits not less than one million dollars. In the alternative, Consultant may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City for loss arising from work performed under this agreement.
- (b) Commercial General and Automobile Liability. Consultant, at Consultant's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this agreement in an amount not less than one million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this agreement, including the use of owned and non-owned automobiles. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 Code 1 (any auto). Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:
- (i) City, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.
  - (ii) The insurance shall cover on an occurrence basis, and not on the basis of an accident or claims made.
  - (iii) The insurance must cover personal injuries as well as bodily injuries. Any exclusion of contractual liability in personal injury provisions of the policy or any endorsement to it must be eliminated.
  - (iv) The insurance must cover complete contractual liability. This may be provided by amending the definition of "incidental contract" to include any written agreement.
  - (v) Any explosion, collapse, and underground property damage exclusion must be deleted.
  - (vi) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.
  - (vii) The policy must contain a cross liability or severability of interests clause.
  - (viii) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

- (ix) Broad form property damage liability must be afforded. A deductible that does not exceed \$25,000 may be provided.
  - (x) Insurance is to be placed with California- admitted insurers with a Best's rating of no less than A:VII.
  - (xi) Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.
- (c) Professional Liability. Consultant, at Consultant's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than one million dollars covering the licensed professionals' errors and omissions, as follows:
- (i) Any deductible shall not exceed \$100,000 per claim.
  - (ii) Notice of cancellation or non-renewal must be received by the City at least thirty days prior to such change.
  - (iii) If the professional liability coverages are written on an occurrence form, the policy must contain a cross liability or severability of interest clause.
  - (iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:
    1. The retroactive date of the policy must be shown and must be before the date of the agreement.
    2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the agreement or the work.
    3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the agreement or the work.
    4. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.
- (d) Deductibles and Self-Insured Retentions. During the period covered by this agreement, upon express written authorization of City's City Attorney, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Consultant may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
- (e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.
- (f) In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
- (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
  - (ii) Order Consultant to stop work under this agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;
  - (iii) Terminate this agreement.
- Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Consultant's failure to maintain insurance or secure appropriate endorsements.



# CITY OF HAYWARD

## GENERAL PROVISIONS FOR PURCHASES OF WORK AND SERVICES

If these general provisions are incorporated by reference into a Purchase Order for work and/or services, all references to "Bidder" or "Successful Bidder" shall be construed to mean the Seller from whom work and services are purchased by the City. The work and services described in the accompanying Request for Quotation or Purchase Order hereinafter shall be designated as "The Work".

### 1.00 Legal Relations and Responsibilities

1.01 Laws to be Observed: The Bidder shall keep itself fully informed of all existing and future State and Federal laws, including O.S.H.A. standards, and all municipal ordinances and regulations of the City of Hayward which in any manner affect those engaged or employed in The Work or the materials used in The Work, or which in any way affect the conduct of The Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

1.02 Labor Discriminations: No discrimination shall be made in employment of persons upon The Work because of the race, color or religion of such persons, and any Successful Bidder which violates this Section is subject to all the penalties imposed for a violations of Chapter 1, Part 7, Division 2, of the Labor Code of the State of California in accordance with the provisions of Section 1735 thereof.

1.03 Prevailing Wage: The Successful Bidder hereby stipulates that Sections 1771 and 1777.5 of the Labor Code of the State of California shall be complied with and shall forfeit as a penalty to the City of Hayward not more than fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the general prevailing rates of per diem wages as determined by the Department of Industrial Relations for such work or craft in which such worker is employed on The Work in violation of the Labor Code of the State of California, in particular the provisions of Sections 1770 to 1780, Inclusive, thereof.

Copies of the general prevailing wage rates are on file in the office of the City Engineer and are available to any interested parties on request.

1.03.1 Certified Payroll Records: Bidder shall maintain certified payroll records as required by Section 1776 of the Labor Code. Copies of certified payroll records shall be provided to the City of Hayward within ten (10) days of written request by the City. Failure to provide copies of certified payroll within the time prescribed by statute shall result in imposition of monetary penalties or withholding of progress payments due under the contract.

1.04 Permits and Licenses: Any person doing business in the City of Hayward is required by Chapter 8, Section 1 of the Municipal code to pay a business license tax. The successful bidder shall have or procure a business license and, prior to initiation of work, show evidence thereof to the Revenue Department. The successful bidder shall, in addition, procure all permits, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of The Work.

1.05 Encroachment Permit: The Successful Bidder shall obtain and/or comply with any encroachment permits as set forth in the order.

1.06 Patents: The Successful Bidder shall assume all responsibilities arising from the use of patented materials, equipment, devices, or processes used on or incorporated in The Work.

1.07 Public Convenience and Safety: Attention is directed to all applicable Sections of Chapter 7, Article 2, STREETS, "Disturbance of Streets," of the City of Hayward Municipal Code.

Traffic control procedures stated herein and traffic control standard plans shall be the MINIMUM accepted in the City of Hayward. Any variations shall be approved by the Engineer prior to use. In no way shall compliance with these specifications and standards relieve the Successful Bidder of any liability for claims or damages arising from his work.

All streets within the project limits shall remain open to traffic at all times during the construction period. Between the hours of 5:00 PM and 8:00 AM, all lanes remain open to traffic.

Adequate traffic warning and control devices shall be provided and maintained

by the Successful Bidder during the construction period in accordance with the "State of California Manual of Warning Signs, Lights and Devices for Use In Performance of Work upon Highways" dated 1973. When inadequate traffic warning and control devices have been installed, the City shall provide whatever facilities are deemed necessary and will charge the Successful Bidder for the costs thereof as provided in Section 7, Article 2 of the Hayward Municipal Code.

Traffic control signs, (regulatory, warning or construction type) conforming to the State of California Standards, and any special-legend signs required, except "NO PARKING" signs, shall be furnished by the Successful Bidder as directed by the Engineer.

The Successful Bidder shall install and maintain all signs.

Any obstructions which will remain in the roadway after darkness MUST BE adequately outlined with barricades with flashers or delineators along with other warning devices. All barricades and delineators shall conform to State of California Manual of Warning Signs, Lights, and Devices for Use in Performance of Work upon Highways.

Safe and convenient pedestrian access shall be provided at all times.

Flagmen are mandatory at locations where equipment is intermittently blocking a traffic lane or where only one lane is available for two-direction traffic. One flagman is required for each direction of traffic affected where only one lane is available for over 100 feet or when required by the Engineer. When less than 20 feet of street width is available for traffic, a flagman will be required. Flagman shall wear distinctive clothing, such as a RED jacket.

All work specified herein shall be considered to be at the Successful Bidder's expense.

1.08 Responsibility for Damage: The Successful Bidder shall take all responsibility for the Work, shall bear all losses and damages directly or indirectly resulting to the Bidder, to any subcontractor, to the City, to City employees, or to parties designated in any purchase order provision, on account of the performance or character of The Work, unforeseen difficulties, accidents, occurrences or other causes predicted on active or passive negligence of the City, or of parties designated in any purchase order provisions. Said Bidder shall assume the defense of and shall indemnify and hold harmless the City, its officers, officials, directors, employees and agents from and against any or all loss, liability, expense, claim, costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance of The Work.

Approval of the insurance contract does not relieve the Successful Bidder or subcontractors from liability under this clause.

1.09 Responsibility for Work: Except as provided above, until the formal acceptance of The Work by the City, the Successful Bidder shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the nonexecution of The Work. The Successful Bidder shall rebuild, repair, and restore, and make good all injuries or damages to any portion of The Work occasioned by any of the above causes before final acceptance and shall bear the expense thereof, except such injuries or damages occasioned by acts of the Federal Government or of the public enemy.

1.10 No Personal Liability: Neither the City Council, officers, employees or agents of the City of Hayward, nor any other officer or authorized assistant or agent shall be personally responsible for any liability arising from or in connection with The Work.

**1.11 Responsibility of City:** The City of Hayward shall not be held responsible for the care or protection of any material or parts of The Work prior to final acceptance, except as expressly provided for in these specifications.

**1.12 Successful Bidder Not an Agent of the City of Hayward:** The right of general supervision of the City of Hayward shall not make the Successful Bidder an agent of the City; and the liability of the Successful Bidder for all damages to persons or to public or private property arising from the Successful Bidder's execution of The Work shall not be lessened because of such general supervision.

**1.13 Inspection and Payments Constitute No Waiver of Order Provisions:** Neither the Inspection by the City Engineer nor by an inspector or other City representative, nor any payment of money, nor acceptance of any part or whole of The Work by the City of Hayward or its agents shall operate as a waiver of any provision of the order.

**1.14 Insurance Requirements:** Successful Bidder shall promptly obtain, at the Bidder's own expense, all the insurance required by this section and shall submit a completed copy of Coverage Verification signed by the Successful Bidder's agent or broker to the City's Purchasing Division for review and approval by the City. Insurance requirements must be met prior to issuance of purchase order. It is highly recommended that Bidders confer with their insurance carrier or broker to determine in advance of bid submission the availability of insurance coverage and endorsements as prescribed and provided herein. If an apparent successful bidder fails to comply with the insurance requirements, that Bidder may be disqualified.

(1) The Successful Bidder shall take out and maintain during the life of the purchase order statutorily sufficient Workers' Compensation and Employer's Liability Insurance for all of the Bidder's employees to be engaged on The Work. Should any work be sublet, the Successful Bidder shall require the subcontractor similarly to provide Workers' Compensation and Employer's Liability Insurance, all in strict compliance with State laws and to fully protect the City from any and all claims arising out of occurrences on The Work.

(2) The Successful Bidder shall take out and maintain in the name of the Successful Bidder and the City as a Named Insured during the life of the purchase order, such Public Liability Insurance as shall protect itself, the City, its officials, officers, directors, employees and agents from claims which may arise from operations under the purchase order, whether such operations be the Bidder, by the City, its officials, officers, directors, employees and agents, any subcontractors, or by anyone directly or indirectly employed by either of them. This Liability Insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from the Successful Bidder's, City's or subcontractor's operations, use of owned or non-owned automobiles, products, and completed operations. The amounts of insurance shall not be less than the following:

Single Limits Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

If Commercial General Liability Insurance or other form with a General Aggregate Limit is used, either the General Aggregate Limit shall apply separately to the project/location or the General Aggregate Limit shall be twice the required occurrence limit.

The following endorsements must be attached to the policy:

(a) If the Insurance policy covers on an "accident" basis, it must be changed to "occurrence".

(b) The policy must contain a Cross Liability or Severability of Interest Clause.

(c) The policy must cover complete Contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property MUST BE ELIMINATED from the basic policy endorsements.

(d) Broad Form property damage liability must be afforded. Permission is granted for deductibles which shall not exceed \$10,000 without special approval of the City.

(e) Any failure to comply with reporting or other provisions of the policies including brochures of warranties shall not affect coverage provided to the City, its Officials, Officers, Directors, Employees, or Agents.

(f) An endorsement shall be provided which states that the coverage is PRIMARY INSURANCE and that no other insurance effected by the City will be called upon to contribute to a loss under this coverage.

(g) Cancellation, non-renewal or reduction in limits shall be sent to the City with at least 10 days prior written notice, by certified mail, return receipt requested.

(h) Insurance is to be placed with California Admitted Insurers with an A.M. Best's Rating of no less than A:XI.

Successful Bidder shall not commence work until such insurance has been approved by the City. The Successful Bidder shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained. Such insurance shall remain in full force and effect at all times during the prosecution of The Work and until the final completion and acceptance thereof.

**1.15 Disposal of Material Outside the Public Right of Way:** The Successful Bidder shall make his own arrangements for disposing of materials outside the public right of way, and he shall pay all costs involved.

**1.16 Preservation of Property:** Attention is directed to Section 1.08, "Responsibility for Damage." Due care shall be exercised to avoid injury to existing improvements or facilities, adjacent property and real or personal property that is not to be removed.

**1.17 Cooperation:** Should work be performed by other firms, within or adjacent to The Work specified, or should work of any other nature be underway by other forces within or adjacent to said limits, the Successful Bidder shall cooperate with all such other firms or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

When two or more firms are employed on related or adjacent work, each shall conduct his operation in such a manner as not to cause any unnecessary delay or hindrance to the other. Each firm shall be responsible to the other for all damage to work, to persons or property caused to the other by his operations and for loss caused the other due to his unnecessary delays or failure to finish The Work within the time specified for completion.

**1.18 Assignment:** The performance of The Work may not be assigned except upon the written consent of the Purchasing Agent. Consent will not be given to any proposed assignment which would relieve the Successful Bidder or its surety of their responsibilities under the order. The Successful Bidder may assign monies due or to become due it under the order and such assignment will be recognized by the City, if given proper notice thereof, to the extent permitted by law. That any assignment of money shall be subject to all proper set-offs in favor of the City, and to all deductions provided for in the order, and particularly all money withheld, whether or not assigned, shall be subject to being used by the City for the completion of The Work, in event that the Successful Bidder should be in default therein.

**1.19 Time of Completion:** The Successful Bidder shall complete all or any designated portion of The Work in all parts and requirements within the time set forth in the order.

**1.20 Care and Protection:** The Successful Bidder shall be entirely responsible for any damage to the City's or adjacent property due to hauling materials or other causes attributable to the conduct of his work, and all such damage will be repaired by the Successful Bidder when and as directed by the City's representative, and as required to place the property in as good condition as before the commencement of The Work.

**1.21 Nondiscriminatory Employment Practices:** In the performance of this contract the contractor or subcontractor agrees as follows:

**(1) AFFIRMATIVE ACTION - GENERAL**

The contractor or subcontractor shall not discriminate against any applicant for employment or employee on the grounds of race, color, religion, national origin, ancestry, place of birth, sex, sexual orientation, age, or disability. The contractor or subcontractor will take affirmative action to ensure that its recruitment, selection, and evaluation practices do not discriminate against any applicant for employment or employee. The contractor or subcontractor shall also ensure that its personnel policies, practices and procedures, including, but not limited to, the transfer, promotion, demotion, suspension, layoff, or termination, rates of pay and other form of compensation, and the selection for training programs, apprenticeship, and on-the-job training do not discriminate against any employee. The contractor or subcontractor shall post in conspicuous places that are accessible to applicants for employment and employees notices setting forth this Nondiscriminatory Employment Practices Provision.

**(2) RECRUITMENT**

**(a) Non-union employees.** Advertising placed with any media shall include the notation, "An Equal Opportunity Employer." Advertisements shall be placed with media having large circulation among minority groups or at school placement centers having large minority student enrollments. The contractor or subcontractor will send to each source of employee referrals, other than labor unions or workers' representatives, a notice in such form and content as shall be furnished or approved by the City, advertising said source of employee referrals of its commitments under Chapter 2, Article 7, of the Hayward Municipal Code, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

Recruitment of non-union employees shall, to the maximum extent possible, utilize the services of minority organizations likely to be referral sources for minority group employees.

**(b) Union employees.** Union employees shall be recruited in accordance with applicable labor agreements. The contractor or subcontractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, in such form and content as shall be furnished or approved by the City, advising said labor union or workers' representatives of its commitments under Chapter 2, Article 7, of the Hayward Municipal Code, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or sub contractor agrees to seek the inclusion in all union agreements to which it is a party, clauses prohibiting discrimination based upon race, color, religion, national origin, ancestry, place of birth, sex, sexual orientation, age, or disability. To the maximum extent consistent with applicable labor agreements, the contractor or subcontractor will attempt to recruit applicants without regard to race, color, religion, national origin, ancestry, place of birth, sex, sexual orientation, age, or disability.

**(3) EQUAL EMPLOYMENT OPPORTUNITY OFFICER**

The contractor or subcontractor shall designate one of its management employees as its Equal Employment Opportunity Officer and assign such officer the responsibility and authority to administer and promote an active program to put the contractor's or subcontractor's nondiscriminatory employment practices commitment into practice.

**(4) ACCESS TO RECORDS**

The contractor or subcontractor shall permit access during normal business hours to its records of employment, employment advertisements, completed application forms, and other pertinent data and records when requested to do so by the City Manager or any representative of the Fair Employment Practices Commission of the State of California.

**(5) COMPLIANCE REVIEW PROCEDURES**

**(a)** The contractor or subcontractor shall, upon request of the City Manager, submit its official payroll records together with a monthly cumulative summary of all employee hours worked in performance of its contract with or on behalf of the City identified as to minority status.

**(b)** The contractor or subcontractor shall submit to a formal, thorough review of its records, books, reports, and accounts concerning its employment practices for the purpose of determining whether they are nondiscriminatory. This review will be performed at intervals during the performance of the contract as may be specified by the City Manager.

Each review shall be followed within 30 days by either a written notice to the contractor or subcontractor that it is in apparent compliance with the Nondiscriminatory Employment Practices Provision of its contract or by a citation of apparent deficiency, summary of findings, and a statement of remedial commitment for signature by the contractor. If the contractor or subcontractor fails to meet the commitments it has made in executing such statement, the City Manager shall issue a notice of intent to initiate an action against the contractor or subcontractor with the Fair Employment Practices Commission for willful violation of the Nondiscriminatory Employment Practices Provision and the California Fair Employment Practices Act in not less than 30 days or such notice of intent.

**(6) VIOLATIONS**

The City Manager shall deem a finding of willful violation of the Nondiscrimination Employment Practices Provision and the California Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the contractor or subcontractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426, which has become final, or obtained relief under Labor Code Sections 1429 and 1429.1, or an appropriate federal commission or agency, or a court of the State of California, or if the United States Government finds, in any action or proceeding to which the contractor or subcontractor is a party, that it discriminated against employees or applicants for employment in the performance of this contract. Upon receipt or such notice or final judgment, the City Manager shall notify the contractor or subcontractor that unless it demonstrates to the satisfaction of the City Council within a stated reasonable period that the violation has been corrected, said contractor or subcontractor shall be subject to the remedies hereinafter provided.

**(7) REMEDIES FOR WILLFUL VIOLATION**

The contractor or subcontractor agrees that a finding of willful violation of the California State Fair Employment Practices Act or of this Nondiscriminatory Employment Practices Provision shall be regarded by the City Council as a basis for determining whether or not it is a responsible bidder as to future contracts for which such contractor or subcontractor may submit bids. The contractor or subcontractor further agrees that such disqualification by said City Council shall remain in effect for one year or until it demonstrates to the satisfaction of the City Manager that its employment practices are in conformity with the nondiscrimination provisions of the article.

The contractor or subcontractor further agrees that the contractor or subcontractor shall, as a penalty to the City of Hayward, forfeit for each calendar day or portion thereof an amount not to exceed \$250 or 1 percent of the total contract amount, whichever is greater. Such penalty may be deducted from any sums due to the contractor or subcontractor or recovered by the City through maintenance of an action in any court of competent jurisdiction.

Prior to making any determination with respect to reinstatement of a contractor or subcontractor as a responsible bidder, the City Council may refer the matter to the Human Relations Commission of the City of Hayward for a report and recommendation. The contractor or subcontractor agrees to cooperate to the fullest extent with said Human Relations commission in its exercise of the authority here conferred, including, but not limited to, promptly furnishing reports requested by the commission's review of matters relating to such reinstatement.

1.22 Acceptance and/or Rejection of Bids: The City reserves the right to reject any or all bids, or to accept separate items in a bid. In addition the City reserves the right to cancel a Request for Bids or an award at any time.

1.23 Waiving Minor Irregularities: The City may waive any minor irregularities in a bid or in the bidding process and make award accordingly.

1.24 Nuclear Affirmation Requirements: A purchase order has no force or effect until the person to which it is issued has on file with the City or executes and returns to the City of Hayward's Purchasing Manager an Affirmation Of Non-Involvement In Development Or Production Of Nuclear Weapons. City of Hayward Ordinance 87-024 C.S. defines "nuclear weapons" as "any device the intended explosion of which results from the energy released by fission or fusion reactions involving atomic nuclei." The ordinance defines "person" as "any person, private corporation, institution or other entity."

1.25 Hazardous Material Requirements: The contractor shall comply with all government laws, rules and regulations concerning the use of hazardous materials and the disposal of hazardous wastes at the job site, including but not limited to the following:

(1) The contractor shall not bring hazardous materials onto the job site or deliver hazardous materials without providing the City, in advance, the Material Safety Data Sheets for each hazardous material introduced. Where applicable, materials must be labeled in accordance with Section 5194, Title 8, of the California Administrative Code. The contractor is required to include a Material Safety Data Sheet prepared in accordance with Section 5194 (g) with each shipment of all such materials to the City. No hazardous material will be introduced onto the job site until the City gives written approval for each hazardous material.

(2) All hazardous material shall be stored and used in a safe manner and shall not be stored or used in any vehicular or pedestrian traffic lanes.

(3) Any hazardous products, waste or empty containers used or generated shall not be poured down any drain or sewer nor disposed of in any trash container or dumpster.

(4) The contractor will be considered to be the hazardous waste generator and will be responsible for the legal transport and disposal of all hazardous waste. No containers or trash will be left in any building or on any job site.

(5) The contractor shall not disturb or damage any existing pipe lagging or equipment insulation or other asbestos material on the job site. If any asbestos material is disturbed or damaged, the contractor shall immediately notify the City and the situation will be considered an "asbestos release" under State and Federal Regulations. The job will be shut down immediately until all appropriate State and Federal notifications have been complete and all testing completed to determine if any asbestos fibers have been released.

(6) Violation of any of the above procedures shall be sufficient cause for the City to stop all work. Any expense incurred by the City caused by the work stoppage will be borne by the contractor. These expenses will include all costs to return the job site and all other areas contaminated by the contractor to a hazard-free condition.

(7) The contractor will be solely responsible for all the costs, including fines and penalties, for the investigation and cleanups of any suspected hazardous materials the contractor used, left on the job site, or dumped down a City drain or sewer, and any damage to property and/or injury to any person.

1.26 Recycled Materials: It is the policy of the City of Hayward to encourage the use of recycled materials, reusable products, and products designed to be recycled. Contractors and suppliers shall use or provide such materials or products to the maximum extent practicable and allowable within the specifications prepared by the City, provided however, that the performance or operational effectiveness of the product or material is not detrimentally effected nor the health and safety of the citizens or employees of the City of Hayward negatively impacted by the use of such products or materials.

(REV. 01/31/13)

# NONDISCRIMINATORY EMPLOYMENT PRACTICES PROVISION CITY OF HAYWARD

In the performance of this contract the contractor or subcontractor agrees as follows:

1. **AFFIRMATIVE ACTION - GENERAL.** The contractor or subcontractor shall not discriminate against any applicant for employment or employee on the grounds of race, color, religion, national origin, ancestry, place of birth, sex, sexual orientation, age, or disability. The contractor or subcontractor will take affirmative action to ensure that its recruitment, selection, and evaluation practices do not discriminate against any applicant for employment or employee. The contractor or subcontractor shall also ensure that its personnel policies, practices and procedures, including but not limited to, the transfer, promotion, demotion, suspension, layoff, or termination, rates of pay or other forms of compensation, and the selection for training programs, apprenticeship, and on-the-job training do not discriminate against any employee. The contractor or subcontractor shall post in conspicuous places that are accessible to applicants for employment and employees notices setting forth this Nondiscriminatory Employment Practices Provision.

2. **RECRUITMENT.**

(a) **Non-union employees.** Advertising placed with any media shall include the notation, "An Equal Opportunity Employer." Advertisements shall be placed with media having large circulation among minority groups or at school placement centers having large minority student enrollments. The contractor or subcontractor will send to each source of employee referrals, other than labor unions or workers' representatives, a notice, in such form and content as shall be furnished or approved by the City, advising such source of employee referrals of its commitments under Chapter 2, Article 7, of the Hayward Municipal Code, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

Recruitment of non-union employees shall, to the maximum extent possible, utilize the services of minority organizations likely to be referral sources for minority group employees.

(b) **Union employees.** Union employees shall be recruited in accordance with applicable labor agreements. The contractor or subcontractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, in such form and content as shall be furnished or approved by the City, advising said labor union or workers' representatives of its commitments under Chapter 2, Article 7, of the Hayward Municipal Code, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor or subcontractor agrees to seek the inclusion in all union agreements to which it is a party, clauses prohibiting discrimination based upon race, color, religion, national origin, ancestry, place of birth, sex, sexual orientation, age, or disability. To the maximum extent consistent with applicable labor agreements the contractor or subcontractor will attempt to recruit applicants without regard to race, color, religion, national origin, sex, age, or disability.

3. **EQUAL EMPLOYMENT OPPORTUNITY OFFICER.** The contractor or subcontractor shall designate one of its management employees as its Equal Employment Opportunity Officer and shall assign such officer the responsibility and authority to administer and promote an active program to put the contractor's or subcontractor's nondiscriminatory employment practices commitment into practice.

4. **ACCESS TO RECORDS.** The contractor or subcontractor shall permit access during normal business hours to its records of employment, employment advertisements, completed application forms, and other pertinent data and records when requested to do so by the City Manager or any representative of the Fair Employment Practices Commission of the State of California.

5. **COMPLIANCE REVIEW PROCEDURES.**

(a) The contractor or subcontractor shall, upon request of the City Manager, submit its official payroll records together with a

monthly cumulative summary of all employee hours worked in performance of its contract with or on behalf of the City identified as to minority status.

(b) The contractor or subcontractor shall submit to a formal, thorough review of its records, books, reports, and accounts concerning its employment practices for the purpose of determining whether they are nondiscriminatory. This review will be performed at intervals during the performance of the contract as may be specified by the City Manager.

Each review shall be followed within 30 days by either a written notice to the contractor or subcontractor that it is in apparent compliance with the Nondiscriminatory Employment Practices Provision of its contract or by a citation of apparent deficiency, summary of findings, and a statement of remedial commitment for signature by the contractor. If the contractor or subcontractor fails to meet the commitments it has made in executing such statement, the City Manager shall issue a notice of intent to initiate an action against the contractor or subcontractor with the Fair Employment Practices Commission for willful violation of the Nondiscriminatory Employment Practices Provision and the California Fair Employment Practices Act in not less than 30 days of such notice of intent.

6. **VIOLATIONS.** The City Manager shall deem a finding of willful violation of the Nondiscriminatory Employment Practices Provision and the California Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the contractor or subcontractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426, which has become final, or obtained relief under Labor Code Sections 1429 and 1429.1, or an appropriate federal commission or agency, or a court of the State of California, or if the United States Government finds, in any action or proceeding to which the contractor or subcontractor is a party, that it discriminated against employees or applicants for employment in the performance of this contract. Upon receipt of such notice or final judgement, the City Manager shall notify the contractor or subcontractor that unless it demonstrates to the satisfaction of the City Council within a stated reasonable period that the violation has been corrected, said contractor or subcontractor shall be subject to the remedies hereinafter provided.

7. **REMEDIES FOR WILLFUL VIOLATION.** The contractor or subcontractor agrees that a finding of a willful violation of the California Fair Employment Practices Act or of this Nondiscriminatory Employment Practices Provision shall be regarded by the City Council as a basis for determining whether or not it is a responsible bidder as to future contracts for which such contractor or subcontractor may submit bids. The contractor or subcontractor further agrees that such disqualification by said City Council shall remain in effect for one year or until it demonstrates to the satisfaction of the City Manager that its employment practices are in conformity with the nondiscrimination provisions of the article.

The contractor or subcontractor further agrees that the contractor or subcontractor shall, as a penalty to the City of Hayward, forfeit for each calendar day or portion thereof an amount not to exceed \$250 or 1 percent of the total contract amount, whichever is greater. Such penalty may be deducted from any sums due to the contractor or subcontractor or recovered by the City through maintenance of an action in any court of competent jurisdiction.

Prior to making any determination with respect to reinstatement of a contractor or subcontractor as a responsible bidder, the City Council may refer the matter to the Human Relations Commission of the City of Hayward for a report and recommendation. The contractor or subcontractor agrees to cooperate to the fullest extent with said Human Relations Commission in its exercise of the authority here conferred, including, but not limited to, promptly furnishing reports requested by the commission's review of matters relating to such reinstatement.

(REV. 11/5/92)

# CITY OF HAYWARD

## SPECIAL AFFIRMATIVE ACTION PROVISION FOR SUPPLY AND SERVICE CONTRACTS

In accordance with section 2-7.04 of the Hayward Municipal Code (HMC), this provision shall be included in every nonconstruction contract estimated by the City to equal or exceed \$10,000 annually, where the contract has a potential for more than one delivery on City request and the Contractor employs more than ten (10) persons, and for every other nonconstruction contract equal to or in excess of \$25,000 (whether paid in one sum upon delivery or completion, or paid periodically and such periodical payments are estimated by the City to total \$25,000 or more in one year) the following requirements must be met in addition to those set out in The City of Hayward Nondiscriminatory Employment Practices Provision (Sec. 2-7.02, HMC):

### 1. IN THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES AS FOLLOWS:

(a) The contractor that submits the apparent low bid shall, on behalf of itself and those of its subcontractors, if any, where the dollar amount of such subcontract exceeds \$10,000, furnish the City Manager such information concerning its employment practices and existing and projected work forces in the form and manner as may be requested by the City Manager.

(b) The contractor that submits the apparent low bid and each of its subcontractors, if any, where the dollar amount of such subcontract is \$10,000 or more, may be required to attend a conference with the City Manager at such time and place as may be fixed by the City Manager to determine whether the information earlier submitted shows compliance with the nondiscrimination requirements of this article.

In making such determination, the City Manager shall consider the following factors:

- (1) The size of the contractor's or subcontractor's existing work force;
- (2) The size of the anticipated work force necessary for the contractor or subcontractor to perform the contract or subcontract for or on behalf of the City;
- (3) The projected turnover, vacancies, or work force expansion that the contractor or subcontractor expects to occur during the term of the contract;
- (4) The specific plans of the contractor or subcontractor to recruit applicants for employment and to select, train, and promote employees hired to complete the contract with or on behalf of the City in like proportion to their numbers in the contractor's or subcontractor's typical, geographic labor market;
- (5) An analysis showing the projected work force that would be expected, after all necessary selection is completed, to perform the contract or subcontract with or on behalf of the City absent any discriminatory employment practices;
- (6) Any other qualitative or quantitative data which would assist the City Manager in determining the contractor's or subcontractor's commitment to meet the nondiscriminatory employment practices requirements of this contract.

(c) Following such conference, the apparent low bidder shall enter into a memorandum of understanding with the City in a form agreed to by such contractor and the City Manager, which memorandum of understanding shall set forth the measures that the contractor and its subcontractors who have attended the conference shall take in furthering and meeting its nondiscrimination employment practices commitment during the performance of the contract.

(d) In the event the apparent low bidder fails to submit the requested written information, appear at the conference, or enter into a memorandum of understanding that is acceptable to the City Manager, the City Manager

shall, after giving notice and an opportunity to respond to the apparent low bidder, contact the second lowest bidder for the purpose of conducting the procedure set out in subsections (a) through (c) herein.

### 2. IMPLEMENTING RULES AND REGULATIONS, ENFORCEMENT PROCEDURE, AND DELEGATION OF RESPONSIBILITY. (Sec. 2-7.05, HMC)

The City Manager shall promulgate all rules, regulations, and forms necessary to implement the provisions of this article. So far as is practical, such rules, regulations, and forms shall be similar to those adopted pursuant to federal Executive Order 11246 and the Fair Employment Practices Act of the State of California.

The City Manager shall monitor the performance of the contractors and subcontractors in their achievement of the nondiscriminatory employment practices requirements provided herein, conduct on-site inspection of their work forces and employment records and submit periodic reports on such performances to the City Council and Human Relations Commission for advisory review to the City Council regarding modifications of this article so as to ensure its effectiveness.

The City Manager shall designate a Contract Compliance Officer and may, at his discretion, delegate responsibility and authority for administering the provisions of this article to the Contract Compliance Officer and to such other officers or employees of the City as necessary for proper administration of this program.

### 3. EXEMPTIONS. (Sec. 2-7.06, HMC)

The following contracts are exempt from the provisions of this article:

- (a) Contracts with other governmental jurisdictions;
- (b) Contracts with manufacturers whose principal place of business is located outside the United States;
- (c) Contracts with the United States manufacturers whose principal place of business is located outside the State of California;
- (d) Contracts with any single or sole source supplier of any goods or service; and
- (e) Contracts resulting from exigent emergency requisitions where any delay in completion or performance of the contract would jeopardize the public health, safety, or welfare of the citizens of the City of Hayward, or where in the judgement of the City Manager the operational effectiveness of a significant City function would be significantly threatened if the contract were not entered into expeditiously.

### 4. CONTRACTS SUBJECT TO EXECUTIVE ORDER 11246. (Sec. 2-7.07, HMC)

No provision of this article shall be construed to apply to any federally assisted construction contract entered into by the City that is subject to Executive Order 11246 or any order amending or superseding Executive Order 11246, the rules and regulations promulgated pursuant to said order, or the Federal Equal Employment Opportunity Bid Conditions for Alameda County.

### 5. OTHER REMEDIES. (Sec. 2-7.08, HMC)

The provisions of this article shall not be construed to prevent the City from pursuing and obtaining any remedy or relief as may be prescribed by law.

### 6. CONTACT

City of Hayward Purchasing and Contract Compliance Specialist, (510) 583-4802.

(rev. 06/26/02)





CITY OF  
**HAYWARD**  
HEART OF THE BAY

AFFIRMATION ON NON-INVOLVEMENT IN  
DEVELOPMENT OF PRODUCTION OF NUCLEAR WEAPONS

The undersigned hereby certifies:

That it understands that City of Hayward Ordinance No.87024 C.S. prohibits award of contract to, or purchase of goods or services from, "any person which is knowingly or intentionally engaged in the development or production of nuclear weapons."

That it understands the ordinance defines "Nuclear Weapon" as "any device the intended explosion of which results from the energy released by fission or fusion reactions involving atomic nuclei."

That it understands the ordinance defines "Person" as "any person, private corporation, institution or other entity..."

As the owner or company official of the firm identified below, I affirm that this company is not knowingly or intentionally engaged in such development or production.

\_\_\_\_\_  
Print/Type Company Name

\_\_\_\_\_  
Print/Type Official Name & Title

\_\_\_\_\_  
Company Address

\_\_\_\_\_  
Signature of Company Official

\_\_\_\_\_  
City/State/Zip Code

\_\_\_\_\_  
Date