

# CONTRACT AMENDMENT

CITY OF TUCSON – BUSINESS SERVICES DEPARTMENT  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701  
P.O. BOX 27210, TUCSON, AZ 85726  
PHONE: (520) 837-4118 / FAX: (520) 791-4735  
[Sandra.Alcorn@tucsonaz.gov](mailto:Sandra.Alcorn@tucsonaz.gov)  
ISSUE DATE: Friday, March 05, 2021

**CONTRACT: 181820-01**  
CONTRACT AMENDMENT NUMBER: TWO (2)  
PAGE 1 of 1  
SA  
SENIOR CONTRACT OFFICER: SANDRA ALCORN

## ON CALL CIVIL ENGINEERING SERVICES

THIS CONTRACT IS AMENDED AS FOLLOWS:

### ITEM 1: CONTRACT RENEWAL

Pursuant to the contract, Special Terms and Conditions, Number 4, Contract Term and Renewal the City is hereby exercising its option to renew the contract for the period of **March 8, 2021 through March 7, 2023.**

### ITEM 2: ASSIGNMENT – DELEGATION

In accordance with the contract 181820-01; STANDARD TERMS AND CONDITIONS, SECTION 5, ASSIGNMENT-DELEGATION: No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of the Contractor shall be made without prior written permission of the City's Director of Procurement. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position by written notice.

The parties hereby agree that, when executed, this amendment shall provide written consent of **Parsons Brinckerhoff** to assign its rights, duties and obligations in connection with contract 181820-01 – On Call Civil Engineering Services to **WSP USA, Inc** and shall constitute acceptance of the assignment by **WSP USA, Inc.**

Nothing in this Consent shall create any additional liability or obligation on the part of the City of Tucson, and the City of Tucson shall not have or assume any liability or obligation with respect to the assignment.

### ITEM 3: RATE ADJUSTMENT


In accordance with the Special Terms and Conditions, Number 5, Price Adjustment, the attached pricing revision will be effective in the renewal period listed in Item 1 of this amendment.

\*\*\*\*\***END OF AMENDMENT**\*\*\*\*\*

**ALL OTHER PROVISIONS OF THE CONTRACT SHALL REMAIN IN THEIR ENTIRETY.**

**CONTRACTOR: WSP USA, Inc** \_\_\_\_\_

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF AND UNDERSTANDING OF THE ABOVE AMENDMENT.

 \_\_\_\_\_ 3/5/2021  
Signature of person authorized to sign Date

Joy Melita, AZ Area Manager, VP  
Name and Title (typed or printed legibly)

WSP USA Inc.  
Company Name

1230 W. Washington St. Suite 405 Tempe, AZ 85281  
Address

Joy.Melita@wsp.com  
Email Address

**CITY OF TUCSON:** \_\_\_\_\_

THE ABOVE REFERENCED CONTRACT AMENDMENT

IS HEREBY EXECUTED THIS \_\_\_\_\_ DAY

OF \_\_\_\_\_, 2021, AT TUCSON, ARIZONA.

\_\_\_\_\_  
as Director of Business Services and not personally

# CONTRACT AMENDMENT

CITY OF TUCSON – BUSINESS SERVICES DEPARTMENT  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701  
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PAGE 2 of 1  
SA  
SENIOR CONTRACT OFFICER: SANDRA ALCORN

Tempe                      AZ                      85281  
City                              State                              Zip


Contact information for Sales/Account Representative  
for daily business operations:

Joy Melita, AZ Area Manager, VP  
Name and Title (typed or printed legibly)

480-921-6875  
Phone Number

Joy.Melita@wsp.com  
Email Address

CONTRACTOR HEREBY ACKNOWLEDGES RECEIPT OF  
AND UNDERSTANDING OF THE ABOVE AMENDMENT.

                      3/5/2021  
Signature                              Date

Joy Melita, AZ Area Manager, VP  
Typed Name and Title

Parsons Brinkerhoff  
Company Name

1230 W. Washington St. Suite 405,  
Address

Tempe, AZ 85281

**FEE ESTIMATE SUMMARY**

PROJECT: RFQ On Call Civil Engineering Services DATE 3/3/2021

PREPARED BY: Tyler Wilson, Project Accountant, WSP CONTRACT NUMBER 181820

EFFECTIVE DATE 3/3/2021 PRIME CONTRACTOR WSP USA Inc.

CONTRACT TIME \_\_\_\_\_ CONTRACT TYPE \_\_\_\_\_

ITEM NO.	FIRM	Discipline	A		B	C	D
			Direct Labor Rate	2021 DLR 7.47%	Overhead 138.27%	Profit 10%	2021 Billing Rate
1	WSP USA Inc.	Principal	\$88.67	\$95.29	\$131.76	\$22.70	\$249.75
2	WSP USA Inc.	Project Manager	\$70.67	\$75.94	\$105.00	\$18.09	\$199.04
3	WSP USA Inc.	Senior A/E	\$50.34	\$54.10	\$74.80	\$12.89	\$141.79
4	WSP USA Inc.	A/E	\$35.34	\$37.98	\$52.51	\$9.05	\$99.54
5	WSP USA Inc.	Designer	\$31.81	\$34.19	\$47.27	\$8.15	\$89.61
6	WSP USA Inc.	CADD	\$32.02	\$34.41	\$47.58	\$8.20	\$90.19
7	WSP USA Inc.	Prof Level II - Inspector	\$32.78	\$35.23	\$48.71	\$8.39	\$92.34
8	WSP USA Inc.	Clerical / Admin	\$38.58	\$41.47	\$57.34	\$9.88	\$108.69

**Formulas**

- (A) Direct Labor Rate
- (B) Overhead @ \_\_\_\_ % X (A)
- (C) Profit @ \_\_\_\_\_% X (A+B)
- (D) Billing Rate (A+B+C)



**CITY OF  
TUCSON**

DEPARTMENT OF  
PROCUREMENT

April 4, 2018

WSP USA Inc.  
Attn: Mark L. Yalung, Arizona Area Manager  
2045 N. Forbes Boulevard, Suite 103  
Tucson, AZ 85745  
[Joseph.vaskovic@wsp.com](mailto:Joseph.vaskovic@wsp.com)

Reference: Contract No. 181820-01  
On Call Civil Engineering

This is your notice of final award for the referenced contract. Please find attached your pdf copy of the contract, purchase order and the designation of contract representative memorandum outlining the duties and responsibilities of the representative as they relate to this contract. If you have any questions concerning this award, please contact me at 520.837.4125.


The City wishes to thank you for your interest and submittal.

Sincerely,

Dan Longanecker, CPPB  
Principal Contract Officer

Attachments

c: File

 <p><b>City of Tucson</b>                  Business Services Department                  255 W. Alameda                  P.O. Box 27210                  Tucson, AZ 85726                  USA                  Email: <a href="mailto:VendorRegistration@tucsonaz.gov">VendorRegistration@tucsonaz.gov</a>                  Phone: (520)791-4217                  Website: <a href="http://www.tucsonprocurement.com">http://www.tucsonprocurement.com</a>                  Id: 1</p>	<p><b>Purchase Order</b></p>	<p>PO Printed Date: 03/08/2018</p>
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V E N D O R	<p>Vendor Number: 0578961</p> <p><b>PARSONS BRINCKERHOFF</b></p>
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<p>PO Date: 03/08/2018                  Buyer: Dan Longanecker                  Phone #: (520)837-4125                  FOB:                  Terms:</p>	<p><b>Purchase Order                  Number                  40742 : 0</b></p> <p><b>ALL PACKING SLIPS,                  INVOICES AND                  CORRESPONDENCE                  MUST REFERENCE THIS                  NUMBER.</b></p>
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S H I P T O	<p>TRANS - Transportation                  MGMT - Management Services                  Transportation/Management Services                  201 N Stone Ave., 6th Fl North                  Tucson, AZ 85701</p>
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I N V O I C E	<p>TRANS - Transportation                  Finance/Accounts Payable                  PO Box 27450                  Tucson, AZ 85726-7450                  USA</p>
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Department	Bid Number	Requisition Number	Delivery Date
TRANS - Transportation		1845908	0 Days ARO

Item	Class Item	Bid Item #	Req Line Item #	Quantity	Unit	Unit Price	Total
1	CONTRACT 181820-01: ON CALL CIVIL ENGINEERING SERVICES FOR THE PERIOD OF MARCH 8, 2018 TO MARCH 7, 2019.		1845908- 1	1.0	EA - Each	\$0.00	\$0.00
<b>Subtotal</b>							\$0.00
<b>Tax</b>							\$0.00
<b>Freight</b>							\$0.00

	<b>Discount</b>	\$0.00
	<b>Total</b>	\$0.00

<b>DIRECTOR OF PURCHASER/BUYER</b>		
<b>FINANCE APPROVED</b>	<b>DATE</b>	<b>ENCUMBERED</b>



# MEMORANDUM

DATE: November 1, 2017

TO: Lance Peterson  
City of Tucson  
Department of Transportation  
[Lance.Peterson@tucsonaz.gov](mailto:Lance.Peterson@tucsonaz.gov)

FROM: Dan Longanecker, CPPB  
Principal Contract Officer

SUBJECT: DESIGNATION OF CONTRACT REPRESENTATIVE

You have been designated the City's Contract Representative for City of Tucson **CONTRACT NO. 181820, On Call Civil Engineering Services**. As Contract Representative, you will interact directly with the Contractor to ensure compliance with the contract terms and provisions.

In order to fulfill your duties and responsibilities on behalf of the City, you must:

1. Be thoroughly familiar with the terms and provisions of the contract;
2. If applicable, after award of the contract issue a written notice to proceed ("NTP") to the Contractor with a copy of the NTP to Procurement for inclusion in the official contract file;
3. Advise the contractor in writing, with copy to Procurement, of any violation of the contract terms and provisions, and in the event significant violations occur, contact the City Department of Procurement for direction;
4. Review any proposed or suggested changes (i.e. amendments) to the contract, and furnish your recommendations for Procurement's authorization prior to proceeding;
5. Promptly accept delivered goods or services, which are satisfactory, and reject those, which are not;
6. Review Contractor invoices thoroughly. Where inaccuracies are found, ensure correction by the Contractor before approval is provided for payment. Invoices must be submitted in accordance with the contract terms;
7. Ensure that a copy of any final reports generated by the Contractor, if required under the contract, are forwarded to Procurement for inclusion in the contract file.

You are **not** authorized to take the following actions:

1. Amend the contract or enter into supplemental verbal or written agreements;
2. Grant time extensions or otherwise modify the terms and provisions of the contract;
3. Commit the City of Tucson in any manner except as allowed under the contract.

Compliance with these policies will, among other things, provide a clear audit trail of City contracts and, most importantly, help prevent potential legal entanglements. Additionally, in accordance with Chapter XV of the Tucson City Charter, any officer or employee of the city, who intentionally or knowingly contracts for or purchases any material services or construction in a manner contrary to the requirements of the Charter or the Tucson Procurement Code shall be deemed guilty of a misdemeanor and shall be removed from office or terminated from employment.

Please indicate your understanding of and concurrence with the provisions of this document, applicable language in the Charter and the Tucson Procurement Code by signing below and returning the original to Procurement. Completion of this form is required prior to authorizing any work under the contract. Your responsibilities cannot be delegated without proper written notification to the City's Department of Procurement.

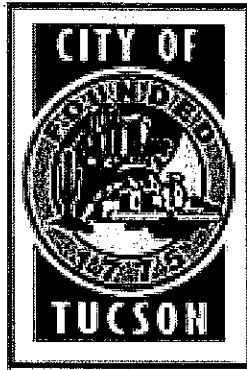
This department looks forward to providing any needed assistance throughout the term of the contract. Please do not hesitate to contact us should you have any questions.

Lance Peterson  
Printed Name

Handwritten signature of Lance Peterson in black ink.

Signature

4/3/18  
Date



DEPARTMENT OF PROCUREMENT

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# **CONTRACT NO. 181820-01**

On Call Civil Engineering Services

**WSP**

**2045 N Forbes Blvd, Suite 103  
Tucson, AZ 85745**

**Phone: 520.319.0745**

**Fax: 000.000.000**

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APPENDIX C – FTA TERMS AND CONDITIONS

APPENDIX D – SCOPE OF PROFESSIONAL SERVICES

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## I. INTRODUCTION

This contract is issued pursuant to Request for Qualifications (RFQ) number 181820 issued to select up to six (6) qualified consultants to provide On-Call Civil Engineering Services for miscellaneous projects. Services to be provided are detailed in APPENDIX D.

This is to establish nonexclusive "services-on-demand" retainer type professional service contracts. The contracts will be based on a negotiated hourly billing rates. A scope of work and a total not-to-exceed fee amount will be negotiated as each project arises.

Federal Transit Administration (FTA) and Regional Transportation Authority (RTA) may be utilized. The FTA Terms and Conditions contained in APPENDIX C will apply to these projects.

## II. TIME OF PERFORMANCE

1. The term of this contract shall commence upon award and shall remain in effect for a period of one (1) year, unless terminated, canceled or extended. The Consultant agrees that the parties shall have the right, to renew the Contract for two (2) additional two-year periods or portions thereof. In the event that the parties exercise such rights, all terms, conditions, and provisions of the original contract shall remain the same and apply during the renewal period with the possible exception of price and minor scope additions and/or deletions.
2. Per project schedules shall be agreed upon prior to issuance of notice-to-proceed for each individual project.

## III. FINANCIAL CONSIDERATIONS

1. In consideration of the services performed under this contract, the City shall pay the Consultant in accordance with hourly rates negotiated in APPENDIX E: FEE ESTIMATE SUMMARY. The level of effort required to complete each project along with any other direct expenses shall be negotiated prior to issuance of notice-to-proceed. Individual projects including all phases and sub-consultants shall not exceed \$ 5000,000 unless the Director of Procurement or his designee approves a waiver prior to issuance of notice-to-proceed. The negotiated fee can be based upon cost plus fixed fee or lump sum.
2. Consultants shall not be reimbursed for normal business use mileage within Pima County. Work requiring travel outside of Pima County shall include reimbursement for travel and per diem expenses paid per current City of Tucson allowances. Vehicle usage, lodging, and per diem expenses for out of town consultants must be identified and approved in the consultant's cost proposal.
3. Consultant shall consider normal computer usage for daily activities as a part of overhead. Computer time for complex graphics, computer dedicated to field activities or computer time for numerical modeling as needed for a specific task must be identified and approved in the consultant's cost proposal.
4. The City will pay the Consultant following the submission of itemized invoice(s). Each itemized invoice must bear a written certification by an authorized City representative confirming the services for which payment is requested.
5. The invoice shall be submitted monthly based upon work completed and direct costs incurred and shall include a ten percent (10%) retainage of the amount billed. Upon completion of the project to the satisfaction of the City and acceptance of the work, final payment and release of retention shall be made.

6. Direct expenses shall be paid at cost to consultant and shall include no markup.
7. The City will review fully documented requests for rate adjustment only after this contract has been in effect for one (1) year. Any rate adjustment will only be made at the time of contract renewal and will be a factor in the renewal review process. The City will determine whether the requested rate adjustment or an alternate option, is in the best interest of the City. Any rate adjustment will be effective upon the effective date of the contract renewal.

**IV. SPECIAL TERMS AND CONDITIONS**

1. **SOFTWARE COMPATABILITY:** For the purposes of aiding the Consultant in the performance of their obligation under this Contract, the City shall furnish upon request all relevant data in the City's possession and shall direct City officers, agents and employees to render all reasonable assistance to Consultant in connection with Consultants performance under this Contract. The provision of such aid, assistance, information or services as received from the City shall in no way relieve the Consultant from obligations under this Contract. The City does not warrant the compatibility of City furnished data, either electronic or in any form, with the Consultant's software. All costs associated with data conversion or software upgrades and conversions shall be borne by the Consultant.
  
2. **INSURANCE:** The Contractor agrees to:
  - A. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force throughout the life of this contract. All policies will contain an endorsement providing that written notice be given to the City at least thirty (30) calendar days prior to termination, cancellation, or reduction in coverage in any policy.
  
  - B. The Commercial General Liability Insurance and Commercial Automobile Liability Insurance policies will include the City and the Regional Transportation Authority (RTA) as an additional insured with respect to liability arising out of the performance of this contract. Such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract. The Contractor agrees that the insurance hereunder will be primary and that any insurance carried by the City will be excess and not contributing.
  
  - C. Provide and maintain minimum insurance limits as applicable.

COVERAGE	LIMITS OF LIABILITY
<b>I. Commercial General Liability:</b>	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Project	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000
<b>II. Commercial Automobile Liability</b>	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement.	
Combined Single Limit	\$1,000,000
<b>III. Workers' Compensation (applicable to the State of Arizona)*1</b>	
Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
<b>IV. Professional Liability (Errors &amp; Omissions) - In addition to I, II, III</b>	
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

\*1 Sole Proprietor/Independent Contractor designation is given to those who desire to waive their rights for workers' compensation coverage and benefits as outlined in ARS§ 23-901 and specifically ARS § 23-961 (O). If applicable, please request the Sole Proprietor/Independent Contractor form from the Contract Officer listed in the solicitation.

- D. ADDITIONAL INSURANCE REQUIREMENTS:** All policies shall include, or be endorsed to include, the following provisions:
1. A waiver of subrogation endorsement in favor of the City of Tucson, for losses arising from work performed by or on behalf of the Contractor.
  2. The insurance afforded the contractor shall be primary insurance and that any insurance carried by the City of Tucson and its agents, officials or employees shall be excess and not contributory.
  3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- E. NOTICE OF COVERAGE MODIFICATIONS:** Any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the City of Tucson. Such notice shall be sent directly to the Department of Procurement.
- F. ACCEPTABILITY OF INSURERS:** Contractors insurance shall have an "A.M. Best" rating of not less than A-VII. The City of Tucson in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- G. VERIFICATION OF COVERAGE:** Contractor shall furnish the City of Tucson with certificates of insurance (ACORD form or equivalent approved by the City of Tucson) as required by this Contract. The certificates for each insurance policy are to be signed by an authorized representative.
- All certificates and endorsements are to be received and approved by the City of Tucson before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work and remain in effect for the duration of the contract and two (2) years after completion. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal upon the City's request, is a material breach of contract.
- All certificates required by this Contract shall be sent directly to the Department of Procurement.
- The City of Tucson project/contract number and project description shall be noted on the certificate of insurance. The City of Tucson reserves the right to require complete copies of all insurance policies required by this Contract at any time.
- H. SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the City of Tucson separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- I. EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self- Insurance

- J. Professional liability insurance carried by the consultant must cover all elements of the project including professional services performed by subcontractors. If the consultant's professional liability insurance does not provide coverage for work performed by subcontractors, separate project insurance will be required to comply with the professional liability insurance requirement. The City may require a copy of the professional liability insurance policy to verify coverage.
3. **PROJECT AWARD:** The City intends to request project specific Statements of Qualifications (SOQs) from all firms awarded under the contract. City staff will review, score and rank the SOQs with highest ranked firm invited to submit a fee proposal and enter into negotiations for the project. Should the City be unable to reach an agreement with the highest ranked firm, negotiations will be terminated and the City may enter into negotiation with the next highest ranked firm for the project.

If this is impracticable, the City may elect to direct select a firm without project SOQs by reviewing initial SOQs submitted during the selection process for evaluation relative to the project requirements. The City will then enter into negotiations the firm deemed be the best qualified for the project.

The City shall not reimburse consultants for the cost of proposal preparation. Each project shall be negotiated and approved by the City Project Manager or designee prior to issuance of Notice to Proceed. The consultant shall not begin any work prior to receipt of Notice to Proceed

Individual projects not to exceed \$500,000 unless a written wavier is approved by the Procurement Department.

4. **CONTRACT TERM AND RENEWAL:** The term of this contract shall commence upon award and shall remain in effect for a period of one (1) year, unless terminated, canceled or extended as otherwise provided herein. The Consultant agrees that the parties shall have the right, to renew the Contract for two (2) additional two (2) year periods, or portions thereof. In the event that the parties exercise such rights, all terms, conditions, and provisions of the original contract shall remain the same and apply during the renewal period with the possible exception of price and minor scope additions and/or deletions.
5. **RATE ADJUSTMENT:** The City will review fully documented requests for rate adjustment after any contract has been in effect for one (1) year. Any rate adjustment will only be made at the time of contract extension and will be a factor in the extension review process. The City will determine whether the requested rate adjustment or an alternate option, is in the best interest of the City. Any rate adjustment will be effective upon the effective date of the contract extension.
6. **PRINCIPAL CONSULTANT'S RESPONSIBILITY:** The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this Contract. The Consultant shall without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. Additionally, when modification to a construction contract is required because of an error or deficiency in the services provided under this Professional Design Services Contract, the City shall consider the extent to which the Consultant may be reasonably liable.

Neither the City's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Consultant shall be and remain liable to the City in accordance with applicable law for all damages to the City caused by the Consultant's negligent performance of any of the services furnished under this Contract.

If the Consultant is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

The Consultant agrees that the work to be performed pursuant to this agreement shall be under the full authority and responsible charge of the undersigned principal of the firm or officer of the corporation who must be the holder of a current Arizona Certificate of Registration issued by the Board of Technical Registration for the practice of professional design services in the State of Arizona.

Any drawings, plans, specifications, and estimates to be prepared pursuant to this agreement shall be prepared by or under the personal direction of the undersigned qualified holder of an Arizona Certificate of Registration issued by the Arizona Board of Technical Registration.

The Consultant shall be responsible for the completeness and accuracy of all services rendered and correction of all errors of omission or commission on the drawings, specifications, and other documents notwithstanding prior approval by the City.

By signing the Contract, the Consultant affirms that it has the ordinary skill, knowledge, and judgment possessed by members of its profession, and that it will use reasonable and ordinary care and diligence in performing the work.

7. **COOPERATIVE PURCHASING:** Any Contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the City of Tucson's Department of Procurement are eligible to participate in any subsequent Contract. See [http://www.tucsonprocurement.com/coop\\_partners.aspx](http://www.tucsonprocurement.com/coop_partners.aspx) and click on Cooperatives for a list of the public and nonprofit agencies that have currently entered into Cooperative Purchasing Agreements with the City of Tucson. Additionally, this contract is eligible for use by the Strategic Alliance for Volume Expenditures (SAVE) cooperative. See <http://www.maricopa.gov/Materials/PubDocuments/SAVE-members.pdf> for a listing of participating agencies. The parties agree that these lists are subject to change.

Any orders placed to, or services required from, the successful Contractor(s) will be requested by each participating agency. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The Contractor may negotiate additional expenses incurred as a result of participating agencies' usage of this contract (i.e., freight charges, travel related expenses, etc.). The City shall not be responsible for any disputes arising out of transactions made by others.

The Contractor(s) will provide an electronic copy of the complete Contract to the City of Tucson Department of Procurement upon receipt of the Notice of Intent to Award. At the City's request, the successful Contractor(s) may also be requested to provide an electronic copy of the complete Contract to a participating agency.

8. **KEY PERSONNEL:** It is essential that the contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The City encourages the Contractor to hire or subcontract if necessary in order to provide the best personnel. The Contractor must agree to assign specific individuals to the key positions.

The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City. If key personnel are not available for work under this contract for a continuous period exceeding thirty calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

9. **DIRECT EXPENSES:** Estimated direct expenses shall be submitted to the Project Manager prior to authorization to proceed. All direct expenses will be compensated at cost with no markup. Travel, mileage and per diem expenses shall be in accordance with General Services Administration (GSA) rates for the Tucson area or for the area that travel is taking place. Vehicle usage, lodging, and per diem expenses for the Contractor's out of town staff or sub-consultants must be identified and approved in the Contractor's

cost proposal. Estimated travel expenses shall be submitted to the Project Manager for approval prior to authorization of specific travel. Contractor will make every effort to minimize or eliminate the need for direct expenses and will actively pursue options to consolidate travel/lodging expenses whenever possible.

Contractor shall not be reimbursed for normal business use mileage within Pima County. Contractor shall consider normal computer and telephone usage for daily activities as a part of overhead.

Travel expenses are limited to the total expense resulting from traveling directly to the destination and staying only the number of days necessary to conduct official business. The Contractor is encouraged to arrive earlier or stay longer than is necessary if doing so will result in savings to the City. In some cases, because of airline discount terms, an additional day(s) of travel will result in substantial airfare savings -- enough savings to offset additional lodging and per diem costs. The Contractor shall fly coach when the flight includes both coach and first-class seats. First-class seats may be allowed if coach seats are not available and no other flight can be substituted. Additional fees or fares incurred during air travel must be substantiated by a receipt. The total reimbursement for vehicular transportation shall in no case exceed the amount that would be incurred using air transportation. Travel by personal vehicle shall be reimbursed in accordance with the current Federal per diem rates. All vehicular parking or storage costs will be reimbursed. Receipts are not required. Vehicle expense reimbursements will be paid only to the vehicle owner. Passengers are not entitled to vehicular expense reimbursement.

Miscellaneous expenses include local phone calls, snacks, and gratuities. Miscellaneous expenses are included in the per diem rate. Contractor is responsible for utilizing the appropriate per diem rates for locations outside of Tucson where travel is taking place. In addition, Contractor is responsible for utilizing updated Per Diem Rates for subsequent Fiscal Years.

10. **INVOICING:** The City will pay the Contractor following the submission of an itemized invoice(s) on the prescribed form as provided by TDOT. Each itemized invoice must bear a written certification by an authorized City representative confirming the services for which payment is requested. The invoice shall be submitted based upon work completed and direct costs incurred. Upon completion of the project to the satisfaction of the City and acceptance of the work, final payment shall be made. The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

11. **SMALL BUSINESS ENTERPRISE (SBE) PROGRAM REQUIREMENTS:**

The Consultant shall be required to comply with SBE Program requirements. Program requirements are codified in Chapter 28, Article XIII of the Tucson Procurement Code. The Prime Consultant shall submit to the Department of Procurement, Business Enterprise & Compliance Program during the negotiation phase(s), either a completed statement of proposed SBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

The SBE Plan must include:

1. The names and addresses of the SBE firms;
2. The type and scope of work or service each SBE will perform; and,
3. The dollar value of work as a percentage of the total contract value.
4. If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver is required prior to concluding negotiations and awarding a project.

A signed offer in response to this RFQ represents the offerors intent to comply with the SBE program.

Also see attached:

APPENDIX A - SBE Program Provisions for Professional Services

12. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS:**

The Consultant shall be required to comply with DBE Program requirements, if goals are applicable, on all federally funded projects under the resulting contract. The DBE program and policies are codified in the Code of Federal Regulations (49 CFR 26). It is the responsibility of all contractors, vendors, suppliers and others who are interested in contracting with the City of Tucson on federal

contracts to read and become familiar with 49 CRF 26. The Consultant shall submit to the Department of Procurement, Business Enterprise & Compliance Program during the negotiation phase(s), either a completed statement of proposed DBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

1. The names and addresses of the DBE firms;
2. The type and scope of work or service each DBE will perform; and,
3. The dollar value of work as a percentage of the total contract value.
4. If the contract goal is not met, evidence of good faith efforts.

An approved plan or waiver is required prior to concluding negotiations and awarding a project.

A signed offer in response to this RFQ represents the offerors intent to comply with the DBE program.

Also see attached:

APPENDIX B - DBE Program Provisions for Professional Services

**13. FTA REQUIREMENTS: See Appendix C**

## V. STANDARD TERMS AND CONDITIONS

1. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract without prior written consent of the City's Director of Procurement.
2. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101, et seq.) and applicable Federal regulations under the Act.
3. **APPLICABLE LAW:** This Contract shall be governed, and the City and Contractor shall have all remedies afforded to each, by the Tucson Procurement Code and the law of the State of Arizona. State law claims shall be brought only in Pima County Superior Court.
4. **ARBITRATION:** It is understood and agreed that no provision of the Contract relating to arbitration or requiring arbitration shall apply to or be binding upon the City except by the City's express written consent given subsequent to the execution of the Contract. However, if both parties agree, disputes may be resolved through arbitration. The dispute shall be resolved as provided for in A.R.S. Sec. 12-1501, et seq. Consultant shall continue to render the services required by this Contract without interruption, notwithstanding the provisions of this section.
5. **ASSIGNMENT-DELEGATION:** No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of the Contractor shall be made without prior written permission of the City's Director of Procurement. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position by written notice.
6. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.
7. **CLEAN UP:** The Contractor shall at all times keep the contract area, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of the City. Upon completion of the repair, the Contractor shall leave the work and premises in clean, neat and workmanlike condition.
8. **COMMENCEMENT OF WORK:** The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives purchase order or is otherwise directed to do so, in writing, by the City.
9. **CONFIDENTIALITY OF RECORDS:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
10. **CONFLICT OF INTEREST:** Subconsultants who design and/or develop specifications for materials for this project will be precluded from contract award for that item if a solicitation is issued for the item.
11. **CONTRACT MODIFICATIONS:** No work outside of the contracted scope of work shall begin without an executed Contract Amendment and a written Notice to Proceed. Contractor shall notify COT immediately when projected hours for individuals under contract are within no less than 20% of exceeding the proposed hours. All direction regarding tasks, deliverables and level of effort shall originate with the designated City Project Manager/Contract Representative or the Department of Procurement. No direction shall be taken from, nor shall any work commence with direction from, any other party.

**12. CONTRACT AMENDMENTS:** The Procurement Department has the sole authority to:

- A. Amend the contract or enter into supplemental verbal or written agreements;
- B. Grant time extensions or contract renewals;
- C. Otherwise modify the scope or terms and provisions of the contract.

This Contract shall only be modified with the approval of the Department of Procurement. Except in the case of a documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Procurement Department through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

- 13. CONTRACT:** The Contract shall be based upon the Request for Proposal issued by the City and the Offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City's Director of Procurement, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.
- 14. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.
- 15. DUPLEXED/RECYCLED PAPER:** In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Contractor shall ensure that, whenever practicable, all printed materials produced by the Contractor in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.
- 16. EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.
- 17. FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.

- 18. FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify

the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

- 19. GRATUITIES:** The City may, by written notice to the Contractor, terminate this Contract if it is found that gratuities, in the form of entertainment, gifts, meals or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
- 20. HUMAN RELATIONS:** Contractor shall abide by the provisions of the Tucson City Code Chapter 28, Article XII.
- 21. INDEMNIFICATION:** To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and Regional Transportation Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, but only to the extent caused by negligence, recklessness or intentional wrongful conduct including but not limited to, any Subconsultant or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant's and Subconsultant's employees, provided, however, that this duty to indemnify, hold harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City. If Consultant or any of Consultant's employees are certified to receive a premium tax credit or cost sharing reduction which triggers a §4980H (a) or (b) penalty against the City, the Consultant shall indemnify the City from and shall pay any assessed tax penalty.
- 22. INDEPENDENT CONTRACTOR:** It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, holidays, paid vacation, sick days, or pension contributions by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses. Contractor is responsible for compliance with the Affordable Care Act for Contractor and any of Contractor's employees.

- 23. INSPECTION AND ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the Contractor's risk and may be returned to the Contractor. If returned, all costs are the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.
- 24. INTERPRETATION-PAROLE EVIDENCE:** This Contract is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or consent in the course of performance under this Contract

shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.

25. **ISRAEL BOYCOTT DIVESTMENTS:** Acceptance of the contract warrants that the vendor is in compliance with A.R.S. § 35-393 and does not participate in a boycott of Israel as that term is defined within A.R.S. § 35-393.
26. **LICENSES:** Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.
27. **LIENS:** All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City's request, the Contractor shall provide a formal release of all liens.
28. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.
29. **NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Tucson. The City reserves the right to obtain like goods or services from another source when necessary.
30. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.
31. **PATENT INFRINGEMENT:** The Consultant and the surety shall defend any suit or proceeding brought against the procuring agency, during the prosecution or after the completion of the work, based on a claim that manufacture, sale, or use of any method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, furnished or used under this Contract constitutes an infringement of any patent, trademark or copyright and the Consultant shall pay all damages and costs awarded therein, against the procuring agency and any affected third party or political subdivision. If manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, is in such suit held to constitute infringement and if manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, is enjoined, the Consultant shall, at its own expense, either procure for the procuring agency the right to continue manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, or replace same with noninfringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part, or modify it so it becomes noninfringing.

If appropriate, the Consultant shall furnish the City Contract Representative satisfactory evidence of patent licenses or patent releases covering City-specified proprietary materials, equipment, devices or processes, as the case may be.

32. **PAYMENT:** The City's preferred method of payment is via credit card. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

The Contractor's payment terms shall apply to all purchases and to all payment methods.

- 33. PROTECTION OF GOVERNMENT PROPERTY:** The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such property, the Contractor shall replace or repair the damage at no expense to the City, as determined and approved by the City's Director of Procurement. If the Contractor fails or refuses to make such repair or replacement, the City will determine a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.
- 34. PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.
- 35. RECORDS:** Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of the Contractor and/or any subcontractors. Said audit shall be limited to this Contract.
- Consultant shall maintain all pertinent files, records, and documents which relate to the delivery of the services provided in this Contract. Supporting documents, files, and records shall be retained by Consultant for at least five (5) years after the termination of this Contract.
- 36. RIGHT TO ASSURANCE:** Whenever one party to this Contract has reason to question, in good faith, the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as the other party's intent not to perform and as a cause for possible Contract termination.
- 37. RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any Contract as awarded or to be awarded.
- 38. RIGHTS AND REMEDIES:** No provision in this document or in the Contractor's proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.
- 39. SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.
- 40. SHIPMENT UNDER RESERVATION PROHIBITED:** No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.
- 41. SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Director of Procurement. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.
- 42. SUBSEQUENT EMPLOYMENT:** The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Director of Procurement is received by the parties to this Contract, unless the notice specifies a later time.

**43. SUSPENSION OF WORK:**

- A. The City may order the Consultant, in writing, to suspend, delay, or interrupt all or any part of the work under this Contract for the period of time that the City determines appropriate for the convenience of the City.
- B. The Consultant agrees that no charges or claims for damages shall be made against the City for any delays or hindrances during the progress of this Contract. Such delays or hindrances, if any will be covered by an extension of time for such reasonable period as mutually agreed upon between the parties. It is agreed and understood, however, that permission to proceed with the Contract after the established completion date, shall not be construed as a waiver by the City of any of the rights herein.

**44. TERMINATION OF CONTRACT:** This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. The City, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to terminate the whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as specified in any of the following:

In the opinion of the City, the Contractor provides personnel that do not meet the requirements of the Contract;

In the opinion of the City, the Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;

In the opinion of the City, the Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;

The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;

In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the Contract;

The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

**45. TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

**46. WARRANTIES:** Contractor warrants that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.

CITY OF TUCSON DEPARTMENT OF PROCUREMENT  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701  
P. O. BOX 27210, TUCSON, AZ 85726-7210  
DAN.LONGANECKER@TUCSONAZ.GOV

**CONTRACT NO. 181820-01**  
PAGE 16 OF 18  
CONTRACT OFFICER: DAN LONGANECKER  
PH: (520) 837-4125 / FAX: (520) 791-5875

CITY OF TUCSON DEPARTMENT OF PROCUREMENT  
255 W. ALAMEDA, 6TH FLOOR, TUCSON, AZ 85701  
P. O. BOX 27210, TUCSON, AZ 85726-7210  
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CONTRACT NO. 181820-01  
PAGE 17 OF 18  
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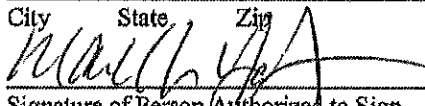
**OFFER TO THE CITY OF TUCSON:**

The Consultant hereby offers to provide the services listed in the attached contract and based upon the Request for Qualifications, including all terms, conditions, specifications, scope of work, amendments, offers and subsequent negotiations, as accepted by the City.

WSP USA Inc.  
Company Name

2045 N. Forbes Blvd, Suite 103  
Address

Tucson AZ 85745  
City State Zip

  
Signature of Person Authorized to Sign

MARK L. YALUNG  
Printed Name

Arizona Manager, VP  
Title

**ACCEPTANCE OF OFFER:**

The Offer is hereby accepted.

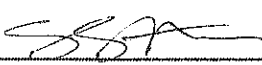
The Consultant is now bound to provide the services listed in the attached contract and based upon the Request for Qualifications, including all terms, conditions, specification, scope of work, amendments, the Consultants Offer and subsequent negotiations, as accepted by the City.

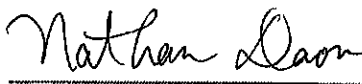
This contract shall henceforth be referred to as **Contract No. 181820-01**. The Consultant has been cautioned not to commence any billable work or to provide any material or service under this contract until Consultant receives a purchase order, or is otherwise directed to do so in writing by the undersigned.

**CITY OF TUCSON**, a municipal corporation

Approved as to form this 8<sup>th</sup> day of March, 2018.

Awarded this 7<sup>th</sup> day of March, 2018.

  
As Tucson City Attorney and not personally

  
for Laura Jestig, C.P.M., CPPB  
As Director of Procurement and not personally

**VI. APPENDICES:**

APPENDIX A – SBE PROVISIONS

APPENDIX B – DBE PROVISIONS FEE ESTIMATE SUMMARY

APPENDIX C – FTA TERMS AND CONDITIONS

APPENDIX D – SCOPE OF PROFESSIONAL SERVICES

APPENDIX E – FEE SUMMARY

APPENDIX F – INSURANCE

**CITY OF TUCSON DEPARTMENT OF PROCUREMENT**



**CONTRACT 181820**

**ON CALL CIVIL ENGINEERING SERVICES**

**APPENDIX A – SBE PROVISIONS**

# SBE PROGRAM PROVISIONS FOR PROFESSIONAL DESIGN SERVICES

## APPENDIX A

### PROJECT GOAL

The City of Tucson's Small Business Enterprise Participation goal for this project is as follows:

#### TBD % SBE

In consideration of the SBE goal on this project, the City identified the following trade areas as potential subcontracting opportunities to meet the goal, however, the Contractor may elect to meet the goal utilizing any subcontracting opportunity they deem appropriate.

### I. SMALL BUSINESS ENTERPRISE REQUIREMENTS

#### A. DEFINITIONS

**Commercially Useful Function** - Is defined as the performance of real and actual services in the discharge of any contractual endeavor. An SBE subcontractor is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved.

**Contractor** - The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City. For the purposes of SBE plan evaluation, any Offeror in negotiations with the City of Tucson pursuant to a Request for Qualifications is also subject to the contractor SBE program compliance requirements.

**Eligible Contract** - Any contract undertaken by the City, unless otherwise precluded by law, *provided* the estimate meets or exceeds one hundred thousand dollars (\$100,000). An Eligible Contract does not include any project in which the estimated contract value is below one hundred thousand dollars (\$100,000); contracts which require a disadvantaged business enterprise goal pursuant to federal law; contracts awarded under sections 28-21 (sole source procurement), 28-22 (emergency procurement) or 28-23 (special procurement) of the City Procurement Code.

**Joint Venture** – An association of two (2) or more persons, partnerships, corporations, business enterprises, or any combination of these entities established to form a single business enterprise but limited in scope and duration for the purpose of carrying out a business activity. The agreement establishing the Joint Venture shall be in writing. The SBE partner(s) must be responsible for a clearly defined portion of the work performed which is set forth in detail and separately from the work to be performed by the non-SBE partner and is assigned a commercially reasonable dollar value. Furthermore, the SBE's interest shall be based on sharing real economic interest in the venture, include proportionate control over management, and interest in capital acquired by the Joint Venture and interest in earnings. Only the portion of work, supplies, and/or services attributed to the SBE, as a member of the Joint Venture, may be counted towards relevant SBE participation goals.

**Small Business Enterprise (SBE)** – A local small business that is an independent and continuing enterprise for profit, performing a Commercially Useful Function, that has completed the application process for certification with the City of Tucson, and has met the requirements set forth in Title 49, Code of Federal Regulations, (49 CFR Part 26).

**Subcontractor and Subconsultant** – A person or entity that contracts to perform work or render service to a Contractor or to another Subcontractor as part of a contract with the City.

## **B. APPLICABILITY**

The SBE program and policies are codified in Chapter 28, Article XIII of the City Procurement Code. It is the responsibility of all contractors, subcontractors, vendors, suppliers and others who are interested in contracting with the City of Tucson to read and become familiar with this section of the City Code.

Only firms that are certified by the City of Tucson under Chapter 28, Article XIII of the City Code, **at time of SBE Plan submittal**, are eligible to fulfill SBE goals for City of Tucson projects.

In addition to subcontractors, contractors may use their own participation towards fulfillment of the SBE participation goal if they are certified through the City of Tucson SBE program.

The City of Tucson's most recent SBE Directory contains the **complete** listing of those firms which are currently certified with the City, and therefore eligible to participate as an SBE on a project. The most recent SBE Directory can be found at: <http://www.tucsonprocurement.com/assets/SBEDirectory.pdf>. If the name of an SBE firm does not appear in the directory, it shall be the contractor's responsibility to ascertain the certification status of the SBE and determine the eligibility of the firm to meet the established goal. The contractor may accomplish this by calling the City's Department of Procurement at (520) 837-4000 for assistance.

ALL CONTRACTORS, INCLUDING SBEs, MUST COMPLY. Contractors who are SBEs must also comply with all requirements stated herein. By submitting to the City of Tucson, contractors bind themselves to make every good faith effort to meet the City's SBE goal and comply with all aspects of the SBE Program requirements.

## **C. SBE PARTICIPATION**

An SBE may participate as a prime contractor, subcontractor, second-tier subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. An SBE shall be responsible for a clearly defined portion of the work to be performed.

## **D. SBE GOALS**

To satisfy SBE goals, a certified SBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Contractors may meet the SBE project goals through the following methods:

**Prime Contractor Participation** – SBE prime contractors may use their own participation towards fulfillment of the SBE participation goals. Credit will only be given for the dollar value of actual work performed by the prime contractor's work force.

**Subcontractor Participation** - Contractors may utilize one or more certified SBE subcontractors to satisfy its SBE participation commitment and may claim the value of the commercially useful function to be performed by such subcontractor(s) to obtain credit toward the satisfaction of the applicable goal.

1. Contractors who utilize certified SBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the SBE firm and may only take credit for the dollar value of that contract towards satisfying its SBE commitment in their proposed SBE plan. The dollar value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values and cannot be specified as a range.
2. If a certified SBE subcontractor enters into second tier subcontracts consistent with the standard industry practices, such SBE subcontractor is performing a commercially useful function. If an SBE subcontractor subcontracts a significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it shall be presumed that the SBE is not performing a commercially useful function. Therefore, contractors are required to identify and report the use of any second tier subcontractors on the project on the Statement of Proposed SBE Plan form.
3. Credit will be given when a SBE subcontracts part of the work of its contract to another firm only if the SBE's subcontractor is itself a SBE.

**Supplier Participation** - The contractor may contract with one or more certified SBE suppliers, provided that the supplier is a regular dealer of the materials supplied, to obtain credit toward SBE goals. The value of the commercially useful function to be performed by such SBE's and credited toward satisfaction of the applicable SBE goals is as follows:

1. If an SBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable SBE participation goal.
2. If an SBE supplier is a wholesaler warehousing the goods supplied or is a manufacturer's representative, the total contract amount is credited toward the established SBE goal; however, only twenty-five percent (25%) of the total SBE project goal may be met in this manner.
3. If an extraordinarily large proportion of a contract price is for equipment or supplies, a lower project goal may be set than otherwise would be required, or the twenty-five percent (25%) limit for suppliers may be increased, or a combination of these two methods may be utilized.

**Joint Venture** - Where a contractor engages in a joint venture to satisfy its SBE commitment, the SBE joint venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. The SBE joint venture partner must submit information for determining joint venture eligibility. ***The SBE joint venture must be approved as a SBE joint venture prior to SBE Plan submittal.*** The Department of Procurement shall determine the degree of SBE participation resulting from the joint venture which may be credited toward the applicable SBE goal of the project.

## II. SUBMITTAL REQUIREMENTS

### A. SUBMISSION OF AN SBE PLAN

The SBE Plan and/or Affidavit of Good Faith Efforts must be submitted with the project proposal.

The SBE Plan must include:

1. The name of the SBE subcontractors/suppliers;
2. The type and scope of work or service each SBE will perform;
3. The dollar value of each SBE's subcontract;
4. Identify the prime contractor as an SBE, if applicable;
5. The dollar value of the prime contractor's self-performed work if claiming SBE credit;
6. The total dollar value of SBE work performed and percentage of the contract value.
7. If the contract goal is not met, evidence of good faith efforts.

### B. REVIEW OF SBE PLANS

The Procurement Director may determine that the contractor is nonresponsive where the contractor: (1) failed to provide a completed Statement of Proposed SBE Plan; (2) failed to identify SBEs by name, the scope of work and value of work as a percent of the total project amount sufficient to meet the applicable SBE goal for that project; (3) failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or (4) failed to meet the requirements for a waiver of the SBE goal.

## III. GOOD FAITH EFFORT

If the SBE plan does not meet the project goals, the contractor may seek a waiver. The application for a waiver shall be in writing and **must be completed and submitted with the project proposal**. The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such waiver must be indicated and an SBE plan must also be submitted. The contractor must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals. Evidence of the good faith efforts shall include, but is not limited to the following:

- a. Documentation of communication with the Procurement Director seeking technical/professional assistance identifying available SBE's.
- b. Copies of written notification to Certified SBE's regarding subcontracting opportunities on a project.
- c. Documentation of efforts made to select portions of work for SBE subcontracting in order to increase the likelihood of meeting the SBE goals, including where appropriate breaking down subcontracts into economically feasible units in order to facilitate SBE participation.
- d. Documentation of efforts to assist and negotiate with SBE's for specific sub-proposals and reasons for rejection of any such offer, including the names, addresses, and telephone numbers of SBE's who were contacted and reason for the rejection.
- e. As to each SBE contacted which was considered not to be qualified, a written statement of the reasons for the conclusion.
- f. Written quotes or records of verbal quotes solicited from all SBE's seeking subcontract work at the time of the proposal submittal.
- g. Verification that the offeror rejected available SBE's because they submitted proposals which were unreasonably high, or they were not qualified. Such verification shall include

a statement of the amounts of all proposals received from potential Subcontractors and all relevant dates.

The City's Procurement Director shall review the waiver and approve the waiver where the contractor has demonstrated good faith efforts or deem the contractor nonresponsive where they failed to meet the good faith efforts and shall recommend that the Project Manager reject the proposal.

**Right to Appeal Good Faith Effort Waiver or Plan Decision** An aggrieved party has a right to protest a good faith waiver request or plan decision made by the Procurement Director as follows:

1. An aggrieved party may submit a protest in writing to the Procurement Director within five (5) days from the date of notice of the adverse decision notice. The protest must include the legal and factual basis for the protest along with any supporting documents.
2. Within five (5) days of receipt of the protest, the Procurement Director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the basis for the decision.
3. The decision of the director is final and not appealable.

**General Waiver or Reduction of SBE Goals** If, after consultation with appropriate City departments, the Procurement Director determines that SBE availability is less than projected, the Procurement Director may waive or reduce established project goals. In such circumstances, the Procurement Director shall certify that SBE's are not in fact available or that the amount of work, which occurred under the contract, was insufficient to support the established goals.

The City shall waive a project goal, at least in part, if the contractor requesting a waiver receives from all qualified SBE's, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-SBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars (\$250,000). In such circumstances, the Procurement Director shall certify that SBE's are not available to provide the needed labor and materials at competitive prices.

A contractor may not compare self-performed costs against an SBE subcontractor proposal as justification for the rejection of a proposal.

The procurement director may verify and / or clarify information as it relates to the affidavit of good faith efforts, and / or the statement of proposed SBE plan.

#### **IV. MISCELLANEOUS PROVISIONS**

##### **A. CONTRACT PERFORMANCE & SUBSTITUTION REQUESTS**

The contractor's distinct contract items of work to be awarded to SBE's shall be performed by the designated SBE. The SBE must perform a commercially useful function, that is, the SBE must manage, perform, and supervise a distinct element of work.

All subcontractor modifications (addition, substitution, deletion) pursuant to the Tucson Procurement Code Section 28-48(2), may only be allowed at the sole discretion of the Procurement Director. Approval must be obtained prior to the subcontractor beginning the work.

In the event that an SBE is unable or unwilling to fulfill its agreement with the contractor, the contractor shall immediately notify the Procurement Department's Business Enterprise &

Compliance Program, the Contract Officer and the Project Manager. The SBE firm can only be terminated for good cause. The contractor shall immediately take reasonable good faith efforts to obtain another certified SBE firm to perform an equal or greater dollar value of the work. The contractor shall provide all pertinent information regarding the SBE substitution request including but not limited to:

1. The name of the original SBE firm, the description of work, the dollar value, the reason for the substitution request and a statement from the original SBE firm explaining why they can't perform the work.;
2. The name of the proposed substitute SBE's, description of proposed work and estimated dollar value of the work and any relevant information such as a written quote, etc.

SBE contract work items shall not be performed by the contractor in lieu of subcontracting, without obtaining prior approval as outlined above.

Contract items eliminated from the project, with the approval of the Project Manager, may not reduce the contractor's obligation for SBE participation.

## **B. SBE PROGRAM COMPLIANCE**

The contractor and all SBE subcontractors must comply with all aspects of the SBE Program. By submitting a bid to the City of Tucson; bidders bind themselves to make every good faith effort to meet the City's SBE goal. The contractor must also include a copy of the SBE contract provisions in every subcontract. An executed subcontract with all SBE subcontractors shall be completed prior to the Notice To Proceed, and available to the City of Tucson upon request.

Failure by the contractor to comply with the SBE provisions is a material breach of the contract which may result in remedies as deemed appropriate by the City, including but not limited to the following:

- (1) Withholding monthly progress or final payments;
- (2) Withholding 10% of future payments;
- (3) Contract termination;
- (4) Disqualifying the contractor from future bidding as non-responsible.

The contractor must comply with applicable Prompt Payment regulations, Tucson Code Section 11-38 and Arizona Revised Statutes Title 32-1129. The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The prime contractors must provide notice to all subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson, Department of Procurement, 255 W. Alameda, 6<sup>th</sup> floor Tucson, Arizona 85701 – PO Box 27210, Tucson, Arizona 85726. The complaint shall set forth the facts and identify the prime contractor and the construction project. Subcontractors will be assisted by the Department of Procurement, Business Enterprise & Compliance Program with the complaint process as detailed in the City of Tucson Construction Fairness Ordinance comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

## **C. CONTRACTOR PERFORMANCE EVALUATION**

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the Prime Contractor Report of Subcontractor Utilization form. In addition to identifying all subcontractors utilized on a project, the report will include a section to rate the performance of

project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 of a subcontractor will require the prime contractor to complete a Substandard Performance Report documenting the cause for the substandard performance rating. The City of Tucson Project Manager must concur with all poor performance ratings.



**City of Tucson  
Department of Procurement, Business Enterprise & Compliance Program**

**AFFIDAVIT OF GOOD FAITH EFFORTS**

IFB NO: \_\_\_\_\_ PROJECT NAME: \_\_\_\_\_

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

CONTACT NAME: \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_

**WHERE A BIDDER FAILS TO EXERCISE "GOOD FAITH" EFFORTS TO MEET SBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE BIDDER WILL BE DEEMED NONRESPONSIVE.**

The intent of this certification is to document the good faith efforts implemented by the apparent low bidder in soliciting and utilizing SBE firms to meet the City of Tucson's SBE goal. This certificate will assist the City of Tucson's Department of Procurement, Business Enterprise & Compliance Program in determining whether the apparent low bidder has implemented comprehensive good faith efforts. The burden of proof rests with the bidder.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a SBE Plan must also be submitted.

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2. Provide a brief summary of why the SBE goal on this project has not been met. Attach supporting documentation.

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3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to SBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

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4. Which portion of the contract proposal, in terms of suppliers was identified for SBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

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5. Which SBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to SBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted	Contact Person	Dates of Contact	Telephone #

6. Was the City of Tucson's Department of Procurement, Business Enterprise & Compliance Program technical or professional staff contacted for assistance? (Note that it is the policy of the Department of Procurement to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the SBE goal.) Attach necessary documentation.

Yes \_\_\_ No \_\_\_ Date of Contact \_\_\_ Contact Person \_\_\_

7. Describe any efforts undertaken to provide SBE firms with information about the project plans, specifications and requirements of the contract.

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8. Describe any additional efforts undertaken to assist SBE firms (e.g. bonding assistance, lines of credit, etc. ).

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9. Indicate which SBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of SBE Firm

Explanation for Rejecting Quotes

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10. Were any bids from SBE Subcontractors that were no more than 15% or \$250,000 greater than the accepted Non-SBE Subcontractor rejected? If so, describe in detail

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11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

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**CITY OF TUCSON DEPARTMENT OF PROCUREMENT**



**CONTRACT 181820**

**ON CALL CIVIL ENGINEERING SERVICES**

**APPENDIX B – DBE PROVISIONS**

# DBE PROGRAM PROVISIONS FOR PROFESSIONAL DESIGN SERVICES

## Attachment B

### PROJECT GOAL

The City of Tucson's Disadvantaged Business Enterprise Participation goal for this project is as follows:

    TBD     % DBE

In consideration of the DBE goal on this project, the City identified the following trade areas as potential subcontracting opportunities to meet the goal, however, the Contractor may elect to meet the goal utilizing any subcontracting opportunity they deem appropriate.

### I. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

#### A. DEFINITIONS

**Commercially Useful Function** - The performance of real and actual services in the discharge of any contractual endeavor. A DBE is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is presumed that the DBE firm is not performing a commercially useful function and no DBE credit may be awarded toward the DBE goal.

**Contract** - A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

**Contractor** - One who participates, through a contract or subcontract (at any tier), in a federally funded program. For the purposes of DBE Plan evaluation, any offeror in negotiations with the City of Tucson pursuant to a Request for Qualifications is also subject to the Contractor DBE program compliance requirements.

**Disadvantaged Business Enterprise or DBE** - A for-profit small business concern certified under the Arizona Unified Certification Program (AZUCP) --

- (a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**Eligible Contract** - Any federally contract undertaken by the City, unless otherwise precluded by law, provided the estimate meets or exceeds one hundred thousand dollars (\$100,000). An Eligible Contract does not include any project in which the estimated contract value is below one hundred thousand dollars (\$100,000); contracts which are require a small business enterprise goal pursuant to the Tucson Procurement Code Chapter 28, Article XIII; contracts awarded under sections 28-21 (sole source procurement), 28-22 (emergency procurement) or 28-23 (special procurement) of the City Procurement Code.

**Good Faith Efforts** - Efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

**Joint Venture** - An association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Primary Industry Classification** - The four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA 22261). NTIS also makes materials available through its web site ([www.ntis.gov/products/naics.aspx](http://www.ntis.gov/products/naics.aspx)).

**Program** - Any undertaking on the City of Tucson's part to use federal financial assistance, authorized by the laws to which this part applies.

**Race and Gender-Conscious** - A measure or program that is focused specifically on assisting only DBEs.

**Race and Gender-Neutral** - A measure or program that is, or can be, used to assist all small businesses.

**Recipient** - Any entity, public or private, to which federal financial assistance is extended, whether directly or through another recipient, or who has applied for such assistance.

**Small Business Concern** - With respect to firms seeking to participate as a DBE, a small business concern (SBC) as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

**Socially and Economically Disadvantaged Individual** - Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

- (a) Any individual who the City of Tucson finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Lorea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the

- Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
  - (vi) Women;
  - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

## B. APPLICABILITY

The City of Tucson has received federal financial assistance and has established a DBE Diversity Program for Contracts in accordance with 49 CFR 26, which is incorporated herein by this reference. The DBE Diversity Program applies to all City and subrecipient contracts that are funded, in whole or in part, by federal financial assistance. In the event of any conflicts or inconsistencies between 49 CFR 26 and this DBE Diversity Program, 49 CFR 26 shall prevail.

**ALL CONTRACTORS INCLUDING DBEs MUST COMPLY.** Contractors who are DBEs must also comply with all requirements stated herein. However, a DBE on a prime contract may meet the contract goal by virtue of the work it performs on the prime contract with its own forces. By submitting to the City of Tucson, contractors bind themselves to make every good faith effort to meet the City's DBE goals and federal regulations.

Firms that are certified **at time of DBE Plan submittal** through the Arizona Unified Certification Program (AZUCP) under 49 CFR Part 26 are eligible to participate as DBEs on City of Tucson contracts that are federally funded wholly or in part.

The Arizona Unified Certification Program (AZUCP) Database contains the **complete** listing of those firms which are certified and therefore eligible to participate as a DBE on a project. DBE participation is NOT limited to Pima County firms. Any DBE firm recognized through the AZUCP is eligible to be recognized as a certified DBE. The AZUCP Database can be accessed through the following internet address: <https://utracs.azdot.gov>. If the name of a firm does not appear in the AZUCP database, it shall be the Offeror's responsibility to ascertain the certification status of the firm.

Questions regarding the AZUCP and the City's DBE Program can be addressed to the City's Department of Procurement, Business Enterprise and Compliance Program at 520-837-4000.

The City of Tucson has provided an overall DBE goal for this project. Prime contractors should be aware that **your obligation is to meet the DBE goal or submit an Affidavit of Good Faith Effort** to waive any or all of the portion of the goal not met.

## C. DBE PARTICIPATION

A DBE goal may only be met by a certified DBE firm performing a commercially useful function. A DBE may participate as a prime contractor, subcontractor, second-tier subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE shall be responsible for a specific contract amount and a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control. Open ended contracts or reimbursable contracts may not be used to meet a DBE goal at the time of bid submission. The contractor must also include a copy of the DBE contract provisions in every subcontract. An executed subcontract with all DBE subcontractors shall be completed prior to the Notice To Proceed, and available to the City of Tucson upon request.

## D. DBE GOALS

To satisfy the DBE goals, a certified DBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Unless specific subcontractor participation goals are expressed in the specifications, contractors may meet the DBE project goals through the following methods:

**Subcontractor Participation** - Where a prime contractor utilizes one or more certified DBE subcontractor(s) to satisfy its DBE participation commitment, the prime contractor may claim only the value of the commercially useful function to be performed by such subcontractor(s) in order to obtain credit toward the satisfaction of the applicable goal.

1. Prime Contractors who utilize certified DBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the DBE firm and may only take credit for the dollar value of that contract towards satisfying its DBE commitment in their proposed DBE plan. The dollar value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values that may be listed in the bid schedule and cannot be specified as a range.
2. When a DBE participates in a contract, only the work actually performed by the DBE will count toward DBE goals.
  - a. Credit will be given for the entire amount of that portion of a contract by the DBE performing a commercially useful function, including the cost of supplies and materials obtained by the DBE for the work of the contract (including supplies purchased or equipment leased by the DBE except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
  - b. Credit will be given for the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a federally funded contract, toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
  - c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. The value of work that a non-DBE subcontractor subcontracts (second-tier) to a DBE firm may count toward DBE goals. Therefore, **prime contractors are required to identify and report the use of any second tier subcontractors on the project on the DBE Plan form.**
  - d. Credit will be given when a DBE subcontracts part of the work of its contract to another firm only if the DBE's subcontractor is itself a DBE.
3. When a DBE is used as the source for materials or supplies:
  - a. If a DBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable DBE participation goal.

- b. If a DBE supplier is a regular dealer (a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock, and regularly sold or leased to the public), 60% of the cost of the materials or supplies will be credited toward DBE goals.

4. Where a contractor engages in a joint venture to satisfy its DBE commitment, the DBE joint venture partner must be responsible for a distinct and clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. DBE joint ventures do not have to be certified as a joint venture by the City prior to bid opening. However, prime contractors must submit information at the time of bid opening that includes a copy of the joint venture agreement and clearly outlines the work to be performed by the DBE joint venture partner, including the dollar amount and percentage of the contract to be performed.

When a DBE performs as a joint venture, the City will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

## **II. SUBMITTAL REQUIREMENTS**

### **A. SUBMISSION OF A DBE PLAN**

**The DBE Plan and/or Affidavit of Good Faith Efforts must be submitted with the project proposal.**

The DBE Plan must include:

1. The names of the DBE subcontractors/suppliers;
2. The type and scope of work or service each DBE will perform;
3. The dollar value of work as a percentage of the total contract value
4. If the contract goal is not met, evidence of good faith efforts.

If the completed Statement of Proposed DBE Plan or, if necessary, a documented waiver application is not included with the proposal, the proposal will be considered non-responsive.

### **B. DBE ACKNOWLEDGMENT OF PARTICIPATION**

The Contractor will be required to submit to the Department of Procurement, Business Enterprise and Compliance Program, a DBE Acknowledgment of Participation for each DBE listed on the proposed DBE Plan which provides signed confirmation that they are participating in the contract as provided in the prime contractor's commitment in their DBE plan.

### **C. REVIEW OF DBE PLANS**

The Director of Procurement may determine that the Plan and/or Affidavit of Good Faith Effort is nonresponsive where the contractor, (1) failed to provide a completed Statement of Proposed DBE Plan; (2) failed to identify DBEs by name, the scope of work and value of work as a percent of the total project amount sufficient to meet the applicable DBE goals for this project; (3) failed to achieve the dollar value of credible participation by certified DBEs as necessary to meet the project goals; (4) failed to provide written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal prior to contract execution; or (5) failed to meet the requirements for a waiver of the DBE goals. The Director's determination shall be in writing and shall state the basis for such decision.

### III. GOOD FAITH EFFORT

A contractor must, in order to be responsive, make good faith efforts to meet the goal. The contractor can meet this requirement in either of two ways. First, the contractor can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it does not meet the goal, the contractor can document adequate good faith efforts. This means that the contractor must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirements of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

The application for a waiver shall be in writing and must be submitted with the project proposal. The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such waiver must be indicated. The contractor must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals.

The following is a list of types of actions which the City will consider as part of the good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

**A.** Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The contractor must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The contractor must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

**B.** Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

**C.** Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

**D.** (1) Negotiating in good faith with interested DBEs. It is the contractor's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not itself sufficient reason for failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve them of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

**E.** Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in

specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

**F.** Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the City of Tucson or contractor.

**G.** Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

**H.** Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

**I.** Communicating with the Department of Procurement, Business Enterprise & Compliance Program seeking technical or professional assistance in identifying available DBEs and requesting the most current Arizona Unified Certification Program (AZUCP) directory of certified DBE firms.

The City's Director of Procurement shall review the waiver application and approve the waiver where the contractor has demonstrated good faith efforts or deem them nonresponsive where they failed to meet the good faith efforts.

#### **IV. ADMINISTRATIVE RECONSIDERATION**

If it is determined by the City's Director of Procurement that the contractor has failed to meet the goal and/or document adequate good faith efforts, the contractor shall have the opportunity for administrative reconsideration. Therefore, within five (5) working days of being notified by the Department of Procurement that it is not responsive because it has not met the goal or documented adequate good faith efforts, a contractor may request administrative reconsideration. Contractors must make this request in writing to the following individual:

Procurement Director  
City of Tucson  
255 W. Alameda – PO Box 27210  
Tucson, Arizona 85726.

The request for reconsideration must include the reasons and factual grounds for reconsideration with any supporting documents. The Procurement Director shall appoint a Reconsideration Official who will not have played any role in the original determination that the Offeror did not document sufficient good faith efforts. The Reconsideration Official shall hold a hearing within ten (10) working days of the request for reconsideration. The contractor will have the opportunity to meet in person with the City's Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Reconsideration Official can also take testimony from City employees.

The City will send the contractor, via certified mail, a written decision on reconsideration, explaining the basis for finding that the contractor did or did not meet the goal or make adequate good faith efforts to do so. The decision will be sent within five (5) working days of the Reconsideration Hearing. The result of the reconsideration process is not administratively appealable. Copies of the reconsideration documentation, including supporting documents and the Reconsideration Officials final decision, shall be maintained in the contract file at the Department of Procurement.

Failure to submit the required information by the stated time and in the manner herein specified **shall** be cause for the contractor to be deemed non-responsive.

The Procurement Director may verify and/or clarify information and request resubmittal of information based on clarification as it relates to the affidavit of good faith efforts, and/or the statement of proposed DBE plan.

## **V. GENERAL WAIVER OR REDUCTION OF DBE GOALS**

If, after consultation with appropriate City departments, the Procurement Director determines that DBE availability is less than projected, the Procurement Director may waive or reduce established project goals. In such circumstances, the Procurement Director shall certify that DBEs are not in fact available.

The City shall waive a project goal, at least in part, if the contractor requesting a waiver receives from all qualified DBEs, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-DBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars (\$250,000). In such circumstances, the Procurement Director shall certify that DBEs are not in fact available to provide the needed labor and materials at competitive prices.

## **VI. MONITORING PAYMENTS TO SUBCONTRACTORS**

Prime contractors must maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Tucson or federal government. This reporting requirement also extends to any certified DBE subcontractor. As part of the contract documents requirement, the contractor will submit company procedures and policy for prompt payment of work and prompt release of retention to subcontractors.

Prime contractors are required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each progress payment made by the City of Tucson to the prime contractor.

The prime contractor is to pay all retention owed to a subcontractor within 30 days of satisfactory completion of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and accepted by the prime contractor as required by the City of Tucson. Payment of retention by a prime contractor to subcontractors following completion and acceptance of work is NOT dependent on the billing of, or payment from, the City of Tucson for the retention release. Required timelines are indicated below:

- A. When a subcontractor has completed all the tasks called for in the subcontract, the subcontractor will submit a written request to the prime contractor for an acceptance inspection and release of all retention.
- B. Within 10 days of receipt of an inspection request by a subcontractor, the contractor shall schedule an inspection / walk through for acceptance of the work.
- C. Within 30 days of the acceptance of a subcontractors work, the prime contractor shall pay all retention owed to a subcontractor.

Once a subcontractor's work has been accepted, a prime contractor may bill the City of Tucson for release of retention equal to the amount of retention that is/has been released to a subcontractor.

Prime contractors are asked to submit the attached Certification of Payments, for each DBE subcontractor utilized on this project, once that portion of the work has been completed and the subcontractor has been paid in full.

Prime contractors will report the actual value of any contract to DBE firms for work committed to them at the time of the contract award. Contractors must submit the enclosed Prime Contractor Report of

Subcontractor Utilization for Final Payment Record to Department of Procurement, Business Enterprise & Compliance Program with their request for final payment. The Final Payment Record will record total dollar amounts paid to both DBE and non-DBE suppliers and subcontractors.

Prime contractors must provide notice to subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson, Department of Procurement, Director, 255 W. Alameda, 6<sup>th</sup> Floor, Tucson, Arizona 85701. The complaint shall set forth the facts and identify the prime contractor and the project. Subcontractors will be assisted by the Department of Procurement with the complaint process.

The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The City of Tucson may withhold payment from the prime contractor for failure to submit and/or complete required documents.

## **VII. MISCELLANEOUS PROVISIONS**

### **A. SUBCONTRACTOR PERFORMANCE & SUBSTITUTION REQUESTS:**

The contractor's distinct contract items of work to be awarded to DBE's shall be performed by the designated DBE. The DBE must perform a commercially useful function, that is, the DBE must manage, perform, and supervise a distinct element of work.

All subcontractor modifications (addition, substitution, deletion) pursuant to the Tucson Procurement Code Section 28-48(2), may only be allowed at the sole discretion of the Procurement Director. Approval must be obtained prior to the subcontractor beginning the work.

In the event that a DBE is unable or unwilling to fulfill its agreement with the contractor, the contractor shall immediately notify the Procurement Department's Business Enterprise & Compliance Program, the Contract Officer and the Project Manager. The DBE firm can only be terminated for good cause. The contractor shall immediately take reasonable good faith efforts to obtain another certified DBE firm to perform an equal or greater dollar value of the work. The contractor shall provide all pertinent information regarding the DBE substitution request including but not limited to:

1. The name of the original DBE firm, the description of work, the dollar value, the reason for the substitution request and a statement from the original DBE firm explaining why they can't perform the work.;
2. The name of the proposed substitute DBE's, description of proposed work and estimated dollar value of the work and any relevant information such as a written quote, etc.

DBE contract work items shall not be performed by the contractor in lieu of subcontracting, without obtaining prior approval as outlined above.

Contract items eliminated from the project, with the approval of the Project Manager, may not reduce the contractor's obligation for DBE participation.

### **B. DBE PROGRAM COMPLIANCE**

The contractor and all DBE subcontractors must comply with all aspects of the DBE federal program requirements as specified in 49 CFR Part 26. By submitting an offer to the City of Tucson; Offeror's bind themselves to make every good faith effort to meet the City's DBE goal. The contractor must also include a copy of the DBE contract provisions in every subcontract. An

executed subcontract with all DBE subcontractors shall be completed prior to the Notice To Proceed, and available to the City of Tucson upon request.

Failure by the contractor to comply with the DBE provisions is a material breach of the contract which may result in remedies as deemed appropriate by the City, including but not limited to the following:

- (1) Withholding monthly progress or final payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or;
- (4) Disqualifying the contractor from future bidding as non-responsible.

The contractor must comply with applicable Prompt Payment regulations, Tucson Code Section 11-38 and Arizona Revised Statutes Title 32-1129. The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The prime contractors must provide notice to all subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson, Department of Procurement, 255 W. Alameda, 6<sup>th</sup> floor Tucson, Arizona 85701 – PO Box 27210, Tucson, Arizona 85726. The complaint shall set forth the facts and identify the prime contractor and the construction project. Subcontractors will be assisted by the Department of Procurement, Business Enterprise & Compliance Program with the complaint process as detailed in the City of Tucson Construction Fairness Ordinance comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

#### **C. CONTRACTOR PERFORMANCE EVALUATION**

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the Prime Contractor Report of Subcontractor Utilization form. In addition to identifying all subcontractors utilized on a project, the report will include a section to rate the performance of project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 of a subcontractor will require the prime contractor to complete a Substandard Performance Report documenting the cause for the substandard performance rating. The City of Tucson Project Manager must concur with all poor performance ratings.

#### **D. RECORD-KEEPING**

The City of Tucson will require prime contractors to maintain records and documents of payments to DBE for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Tucson or federal government. The reporting requirement also extends to any certified DBE subcontractors.

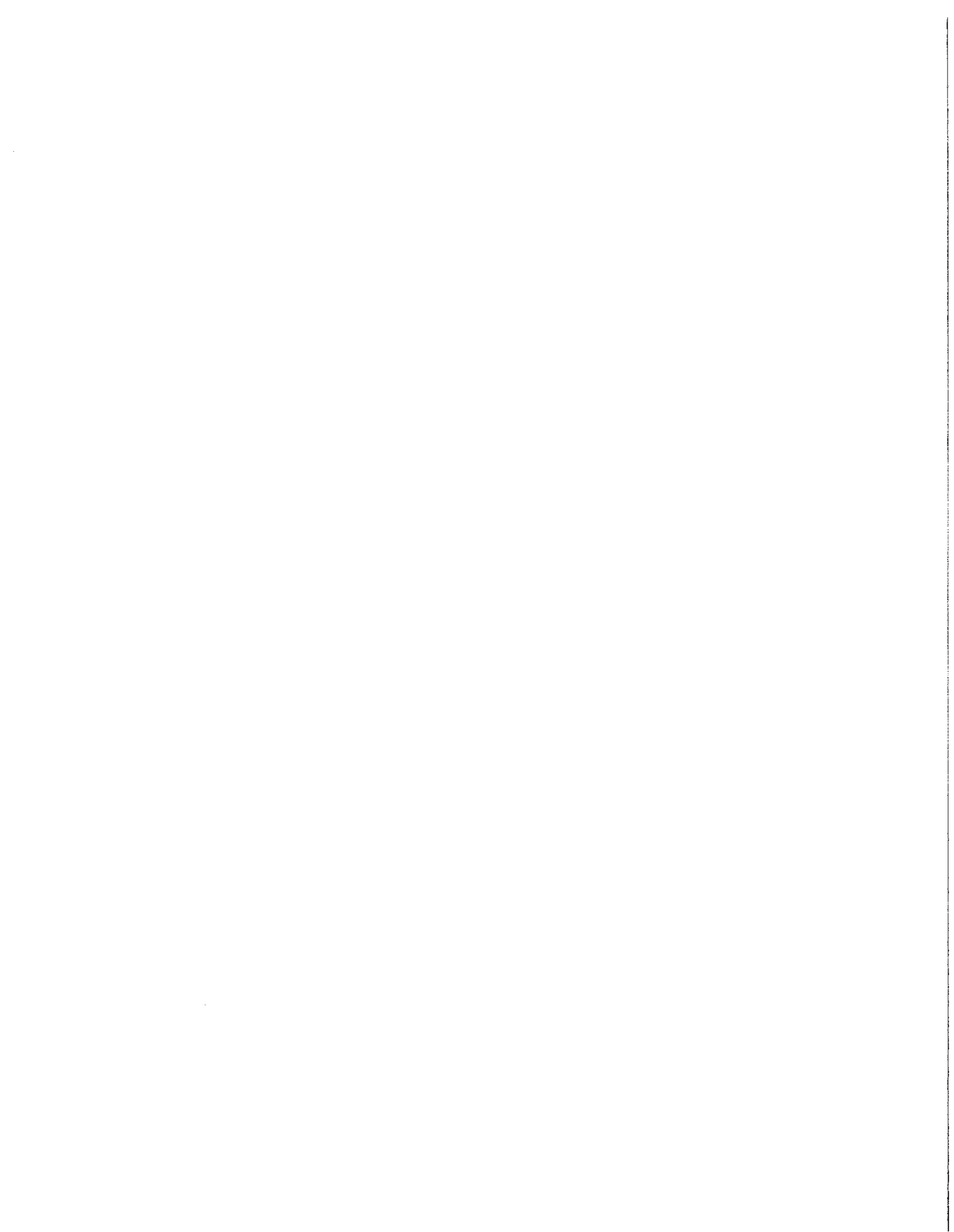
#### **E. FALSE, FRAUDULENT OR DISHONEST CONDUCT**

The City of Tucson will bring to the attention of the federal government any false, fraudulent or dishonest conduct in connection with the DBE Diversity Program for Contracts so that the federal government can take steps (e.g., referral to the Department of Justice for criminal prosecution, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR 26.109. The City will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

## **F. NON-DISCRIMINATION**

The City of Tucson shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any federal contract or in the administration of its DBE Program or the requirements of 49 CFR 26. The recipient shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and administration of federal contracts. The recipient's DBE Program, as required by 49 CFR 26, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of Tucson of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).





**City of Tucson**  
**Department of Procurement, Business Enterprise & Compliance Program**

**AFFIDAVIT OF GOOD FAITH EFFORTS**

RFQ NO: \_\_\_\_\_ PROJECT NAME: \_\_\_\_\_

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

CONTACT NAME: \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_

**WHERE AN OFFEROR FAILS TO EXERCISE "GOOD FAITH" EFFORTS TO MEET DBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE OFFEROR WILL BE DEEMED NONRESPONSIVE.**

The intent of this certification is to document the good faith efforts implemented by the top ranked offeror in soliciting and utilizing DBE firms to meet the City of Tucson's DBE goal. This certificate will assist the City of Tucson's Department of Procurement, Business Enterprise & Compliance Program in determining whether the Offeror has implemented comprehensive good faith efforts. The burden of proof rests with the Offeror.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a DBE Plan must also be submitted.

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2. Provide a brief summary of why the DBE goal on this project has not been met. Attach supporting documentation.

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3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to DBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

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4. Which portion of the contract proposal, in terms of suppliers was identified for DBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

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5. Which DBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to DBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted	Contact Person	Dates of Contact	Telephone #

6. Was the City of Tucson's Department of Procurement, Business Enterprise & Compliance Program technical or professional staff contacted for assistance? (Note that it is the policy of the Department of Procurement to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the DBE goal.) Attach necessary documentation.

Yes \_\_\_ No \_\_\_ Date of Contact \_\_\_\_\_ Contact Person \_\_\_\_\_

7. Describe any efforts undertaken to provide DBE firms with information about the project plans, specifications and requirements of the contract.

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8. Describe any additional efforts undertaken to assist DBE firms (e.g. bonding assistance, lines of credit, etc.).

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9. Indicate which DBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of DBE Firm

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Explanation for Rejecting Quotes

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10. Were any bids from DBE Subcontractors that were no more than 15% or \$250,000 greater than the accepted Non-DBE Subcontractor rejected? If so, describe in detail

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11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

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**CERTIFICATION OF PAYMENTS TO DBE FIRMS**

Project Name: \_\_\_\_\_  
COT Job No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_  
Fed Job No.: \_\_\_\_\_ State TRACS No.: \_\_\_\_\_

The undersigned prime contractor on the above named City of Tucson project hereby, certifies that full payment was made to the firm indicated for material and/or work performed under this project's contract as follows:

Firm Name \_\_\_\_\_, was paid \$ \_\_\_\_\_

The subcontract was completed on \_\_\_\_\_

Full Retention has been released to the Subcontractor by the Prime Contractor Yes / No

This certification is made under Federal and State laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime contracts, all documentation supporting the contractors position should be submitted.

**I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.**

\_\_\_\_\_  
Prime Consultant

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

=====  
The undersigned subcontractor/supplier/manufacturer for the above named project hereby certifies that payments were received and/or justification by contractor is correct.

**I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.**

\_\_\_\_\_  
Subcontractor/Supplier/Manufacturer

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY OF TUCSON DEPARTMENT OF PROCUREMENT**



**CONTRACT 181820**

**ON CALL CIVIL ENGINEERING SERVICES**

**APPENDIX C – FTA TERMS AND CONDITIONS**

**FEDERAL TRANSIT ADMINISTRATION  
TERMS, CONDITIONS, AND CERTIFICATIONS**

**\*\*\*RFQ 181820 APPENDIX C\*\*\***

# FEDERAL TRANSIT ADMINISTRATION TERMS, CONDITIONS AND CERTIFICATIONS

## **Requirements/Conditions For All FTA Assisted Contracts:**

- Federal Disclaimer to Third Parties
- Program Fraud and False or Fraudulent Statements and Related Acts
- Prohibitions Against Exclusionary or Discriminatory Specifications
- Debarment and Suspension Requirements
- Federal Changes
- Civil Rights Requirements
- Termination Provisions
- Requirements for Disadvantaged Business Enterprises
- Incorporation of FTA Terms

## **Requirements for Contracts Exceeding Small Purchase Threshold (\$100,000):**

- Report, record retention, and access provisions
- Buy America requirements
- Provisions For Resolution Of Disputes, Breaches, Defaults Or Other Litigation
- Lobbying Requirements
- Bonding Requirements for Construction Activities; (may be imposed for nonconstruction activities)
- Clean Water Requirements
- Clean Air Requirements
- Requirements for Recycled Products (for items designated by EPA)

## **Cargo Preference**

- Acquisition of Property Shipped by Ocean Vessel
- Acquisition of Property Shipped by Air

## **Non Construction Activities**

- Non Construction Employee Protection Requirements (Except for supplies/raw materials)

## **Planning, Research, Development and Demonstration Projects**

- Patent Rights Requirements
- Rights in data and copyrights requirements

## **Miscellaneous Special Requirements**

- Environmental Protection
- Energy Conservation Requirements
- Metric System Requirements
- National ITS Architecture
- Seat Belt Use
- Text Messaging While Driving

## **Certifications**

**Buy America  
Lobbying**

## **Protest Procedures For Federal Transit Administration Funded Projects**

**City Of Tucson Protest Procedures For Federal Transit Administration (FTA) Funded  
Projects**

**Requirements/Conditions For All FTA Assisted Contracts**

## **This Contract is Subject to Federal Financial Assistance/Application of Provisions and Clauses**

This contract is funded in part by grants from the Federal Transit Administration (FTA) of the United States Department of Transportation. The award of any contract is subject to the requirements of financial assistance contracts between the City of Tucson and the U.S. Department of Transportation.

The Contractor is required to comply with all terms and conditions prescribed for third-party contracts by the U.S. Department of Transportation, Federal Transit Administration (FTA). If FTA requires any change to this Contract to comply with its requirements, both parties agree to amend the Contract as required by FTA. If such changes cause an increase or decrease in the work to be performed by the Contractor or the time for such performance, then the compensation to be paid the Contractor and time of performance shall be equitably adjusted.

The required contract clauses, which are identified below as applicable to this solicitation, will be incorporated by reference in any contract resulting from this solicitation issued by the City Of Tucson. These solicitation provisions and required contract clauses are in addition to other General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures, and Bid or Proposal Forms set forth in other sections of this solicitation which may also be incorporated by reference in any resulting contract. If there is any discrepancy in the language between this document and the General Specifications, Special and Technical Specifications, Bidding or Proposal Procedures and Bid or Proposal Forms set forth in other sections of this solicitation, the stricter of two shall govern.

Some provisions and clauses require the bidder/proposer to execute and submit certain required certifications with the bid or proposal, which are included herein. Failure to execute and submit required certifications with the bid or proposal documents may render a bid or proposal non-responsive.

### **Federal Disclaimer to Third Parties**

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### **Program Fraud and False or Fraudulent Statements and Related Acts - 31 U.S.C. § 3801 et seq., 49 CFR Part 31, 18 U.S.C. § 1001, 49 U.S.C. 5307**

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may

be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **Prohibitions Against Exclusionary or Discriminatory Specifications – 49 U.S.C. § 5323(h)(2)**

1. Apart from inconsistent requirements imposed by Federal statute or regulations, the City of Tucson agrees that it will comply with 49 U.S.C. § 5323 (h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

#### **Debarment and Suspension Requirements - 49 CFR Part 29, Executive Order 12549**

#### **Certification Regarding Debarment, Suspension, and Other Responsibility Matters - (Third Party Contracts over \$25,000).**

#### **Instructions for Certification**

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below .
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the City of Tucson may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the City of Tucson if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the City of Tucson for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the City of Tucson.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the City of Tucson may pursue available remedies including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction**

1. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Federal Changes - 49 CFR Part 18**

1. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (16) dated October, 2009 between the City of Tucson and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract. All standards or limits set forth in this Contract to be observed in the performance of the work are minimum requirements, unless modified by the FTA.

**Civil Rights Requirements - 29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.**

1. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

- a. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- b. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## Termination Provisions - 49 U.S.C.Part 18, FTA Circular 4220.1F

1. **Termination for Convenience (General Provision):** The City Of Tucson may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City Of Tucson to be paid the Contractor. If the Contractor has any property in its possession belonging to the City Of Tucson, the Contractor will account for the same, and dispose of it in the manner the City Of Tucson directs.
2. **Termination for Default [Breach or Cause] (General Provision):** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City Of Tucson may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City Of Tucson that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City Of Tucson, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3. **Opportunity to Cure (General Provision):** The City Of Tucson in its sole discretion may, in the case of a termination for breach or default, allow the Contractor to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the City Of Tucson's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract after receipt of written notice from the City of Tucson setting forth the nature of said breach or default, the City of Tucson shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City of Tucson from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. **Waiver of Remedies for any Breach:** In the event that the City of Tucson elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City of Tucson shall not limit the City of Tucson's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
5. **Termination for Convenience (Professional or Transit Service Contracts):** The City of Tucson, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the City of Tucson shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
6. **Termination for Default (Supplies and Service):** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Tucson may terminate this contract for default. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination

specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Tucson.

7. **Termination for Default (Transportation Services):** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Tucson may terminate this contract for default. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the City of Tucson, protect and preserve the goods until surrendered to the City of Tucson or its agent. The Contractor and the City of Tucson shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Tucson.

8. **Termination for Default (Construction):** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the City of Tucson may terminate this contract for default. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the City of Tucson may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the City of Tucson resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the City of Tucson in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

- a. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the City of Tucson, acts of another Contractor in the performance of a contract with the City of Tucson, epidemics, quarantine restrictions, strikes, freight embargoes; and
- b. the contractor, within ten [10] days from the beginning of any delay, notifies the City of Tucson in writing of the causes of delay. If in the judgment of the City of Tucson, the delay is excusable,

the time for completing the work shall be extended. The judgment of the City of Tucson shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City of Tucson.

9. **Termination for Convenience or Default (Architect and Engineering):** The City of Tucson may terminate this contract in whole or in part, for the City of Tucson's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the City of Tucson, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the City of Tucson may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the City of Tucson.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Tucson.

10. **Termination for Convenience or Default (Cost-Type Contracts):** The City of Tucson may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the City of Tucson or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the City of Tucson, or property supplied to the Contractor by the City of Tucson. If the termination is for default, the City of Tucson may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of Tucson and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the City of Tucson, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the City of Tucson determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the City of Tucson, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

## Requirements for Disadvantaged Business Enterprises (DBE's) - 49 CFR Part 23 & 26

1. The Federal Fiscal Year goal has been set by the City Of Tucson in an attempt to match projected procurements with available qualified disadvantaged businesses. The City Of Tucson goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the City Of Tucson as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23& 26, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated in these Legal Documents and Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, the City Of Tucson may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

- a. Policy - It is the policy of the Department of Transportation and the City Of Tucson that Disadvantaged Business Enterprises, as defined in 49 CFR Parts 23 & 26, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 & 26 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 & 26 and Section 106(c) of the STURAA of 1987 have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or any such other remedy as the recipient deems appropriate.

It is further the policy of the City Of Tucson to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the City Of Tucson procurement activities are encouraged.

- b. DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 & 26 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.
- c. Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the City Of Tucson may declare the contractor noncomplaint and in breach of contract.

- d. The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the City Of Tucson DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the City Of Tucson and will be submitted to the City Of Tucson upon request.
- e. The City Of Tucson will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- \* Identification of qualified DBE

- \* Available listing of Minority Assistance Agencies

- \* Holding bid conferences to emphasize requirements

2. DBE Program Definitions, as used in the contract:

- a. Disadvantaged business "means a small business concern":
  - i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
  - ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.or
  - iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and
  - iv. Whose management and daily business operations are controlled by one or more women individuals who own it.
- b. "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.
- c. "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.
  - i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

- ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;
- v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

### **Incorporation Of Federal Transit Administration (FTA) Terms - FTA Circular 4220.1F**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of the City Of Tucson's requests which would cause the City Of Tucson to be in violation of the FTA terms and conditions.

**Requirements for Contracts Exceeding \$100,000**

## **Access To Records And Reports - 49 U.S.C. 5325, 18 CFR 18.36 (i), 49 CFR 633.17**

### **Records Retention**

Contractor shall retain all books, documents, papers, data and records relating to its performance under this contract until the expiration of three years after final payment of the contract and all other contractual matters are closed.

### **Audit and Inspection of Records**

1. The Contractor shall permit the authorized representatives of the City Of Tucson, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit any books, documents, papers, data and records relating to its performance under the contract until the expiration of three years after final payment under this contract.
2. The Contractor further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that the City Of Tucson, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subcontractor directly pertinent to this contract. The term "subcontract" as used in this clause excludes
  - a. purchase orders not exceeding \$10,000 and
  - b. subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
3. The periods of access and examination described above, for records which relate to
  - a. appeals under the disputes clause of this contract,
  - b. litigation or the settlement of claims arising out of the performance of this contract, or
  - c. costs and expenses of this contract to which an exception has been taken by the U.S. Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

### **Access**

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described

at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

### **Buy America Requirements - 49 U.S.C. 5323(j), 49 CFR Part 661**

#### **Buy America Provision: Steel and Manufactured Products Other than Buses, Rolling Stock and Associated Equipment**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (see Certification section) with all bids on FTA-funded contracts, of \$100,000 and above, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

## **Provisions For Resolution Of Disputes, Breaches, Defaults Or Other Litigation - 49 CFR Part 18, FTA Circular 4220.1F**

### **Disputes**

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City Of Tucson. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the City Of Tucson. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the City Of Tucson shall be binding upon the Contractor and the Contractor shall abide by the decision.

### **Performance During Dispute**

Unless otherwise directed by the City Of Tucson, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

### **Claims for Damages**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

### **Remedies**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City Of Tucson and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City Of Tucson is located.

### **Rights and Remedies**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City Of Tucson, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **Lobbying Requirements - 31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20**

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." 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 the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the City Of Tucson.

## **Bonding Requirements for Construction Activities; may be imposed for non-construction activities**

**Refer to the Special Terms & Conditions of this Solicitation**

### **Bid Bond Requirements (Construction )**

a. Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to the City Of Tucson and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

b. Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by the City Of Tucson to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for the time period designated in the General Terms and Conditions subsequent to the opening of bids, without the written consent of the City Of Tucson.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid after the bid opening without the written consent of the City Of Tucson, shall refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of the City Of Tucson's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the City Of Tucson as provided shall prove inadequate to fully recompense the City Of Tucson for the damages occasioned by default, then the undersigned bidder agrees to indemnify the City Of Tucson and pay over to the City Of Tucson the difference between the bid security and the City Of Tucson's total damages, so as to make the City Of Tucson whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

**Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

a. Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the City Of Tucson determines that a lesser amount would be adequate for the protection of the City Of Tucson.
2. The City Of Tucson may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The City Of Tucson may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

b. Payment bonds

1. The penal amount of the payment bonds shall equal:
  - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
  - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - iii. Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the City Of Tucson may require additional protection as required by subparagraph 1 if the contract price is increased.

## **Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor may be required to obtain performance and payment bonds when necessary to protect the City Of Tucson's interest.

- a. The following situations may warrant a performance bond:
  1. The City Of Tucson property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
  2. A contractor sells assets to or merges with another concern, and the City Of Tucson, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
  3. Substantial progress payments are made before delivery of end items starts.
  4. Contracts are for dismantling, demolition, or removal of improvements.
- b. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
  1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the City Of Tucson determines that a lesser amount would be adequate for the protection of the City Of Tucson.
  2. The City Of Tucson may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The City Of Tucson may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the City Of Tucson's interest.
- d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
  1. The penal amount of payment bonds shall equal:
    - i. Fifty percent of the contract price if the contract price is not more than \$1 million;
    - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - iii. Two and one half million if the contract price is increased.

### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The City Of Tucson shall determine the amount of the advance payment bond necessary to protect the City Of Tucson.

### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The City Of Tucson shall determine the amount of the patent indemnity to protect the City Of Tucson.

### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to the City Of Tucson, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by the City Of Tucson, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the City Of Tucson and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the City Of Tucson. As additional security for these guarantees, at the City of Tucson's request the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the City Of Tucson written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

### **Clean Water Requirements - 33 U.S.C. 1251**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA

### **Clean Air Requirements - 42 U.S.C. 7401 et seq., 40 CFR 15.61, 49 CFR Part 18**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each

violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA

**Requirements for Recycled Products - 42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873**

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **Cargo Preference**

## **Cargo Preference - 46 U.S.C. 1241, 46 CFR Part 381**

### **Acquisition of Property Shipped by Ocean Vessel:**

Pursuant to 46 C.F.R. Part 381, the following clauses must be inserted in all contracts under which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project.

The contractor agrees to:

- a. use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
- c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### **Acquisition of Property Shipped by Air (Fly America):**

Fly America Requirements - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**Non Construction Activities**

**Non Construction Employee Protection Requirements (Except for supplies/raw materials)**

The Contractor agrees to comply with and assures compliance by other Project participants with any applicable employee protection requirements for nonconstruction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

**Planning, Research, Development and Demonstration Projects**

## Patent And Rights In Data - 37 CFR Part 401, 49 CFR Parts 18 and 19

### CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

- A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:
1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
  2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
    - a. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
    - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
      1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
      2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
    - c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course

of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- d. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
  - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  - f. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause , provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
  - g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
  4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

- B. Patent Rights - This following requirements apply to each contract involving experimental, developmental, or research work:
1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
  2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,"
2. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**Miscellaneous Special Requirements**

**Environmental Protection 42 U.S.C. 4321 et seq., 49 U.S.C. 5324(b) et seq., 40 CFR Part 1500 et seq., 23 CFR Part 771, 49 CFR Part 622**

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622

**Energy Conservation Requirements - 42 U.S.C. 6321 et seq., 49 CFR Part 18**

Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**Metric System Requirements – 15 U.S.C. 205a et seq.**

As required by U.S. DOT or FTA, the City of Tucson agrees to use the metric system of measurement in its Project activities, as may be required by 15 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the City of Tucson agrees to accept products and services with dimensions expressed in the metric system of measurement.

**National ITS Architecture**

The Contractor agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and to any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

**Seat Belt Use**

In accordance with the provisions of Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, the contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any subagreements, leases, third party contracts, or other similar document in connection with the Project.

**Text Messaging While Driving**

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the contractor is encouraged to comply with the terms of the following Special Provision.

a. Definitions. As used in this Special Provision:

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

b. Safety. The Grantee is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving-

(a) Grantee-owned or Grantee-rented vehicles or Government-owned, leased or rented vehicles;

(b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(c) Any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the Grantee's size, such as:

(a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subagreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.

## **Certifications**

**BUY AMERICA CERTIFICATION  
CERTIFICATION FOR PROCUREMENT OF STEEL OR MANUFACTURED  
PRODUCTS**

(To be submitted with each bid or offer exceeding \$100,000)  
(To be signed and submitted by the bidder/offeror)

Certification requirement for all procurements except buses, other rolling stock and associated equipment.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

**Certificate of Compliance with 49 U.S.C. 5323(j)(1)**

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date 3/13/18

Signature 

Company Name WSP USA Inc.

Title AZ Area Manager

**Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**CERTIFICATION REGARDING LOBBYING  
CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE  
AGREEMENTS**

**(To be submitted with each bid or offer exceeding \$100,000)**

**(To be submitted by the bidder/offeror)**

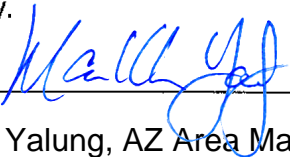
The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq .)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, WSP USA Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

  
\_\_\_\_\_

Signature of Contractor's Authorized Official

Mark Yalung, AZ Area Manager Name and Title of Contractor's Authorized Official

3/13/18 Date

**Protest Procedures For Federal Transit Administration Funded  
Projects**

## City Of Tucson Protest Procedures For Federal Transit Administration (FTA) Funded Projects

***A protestant must exhaust all City of Tucson Procurement administrative procedures and remedies before pursuing a protest with the FTA.***

1. Any and all protests shall be in writing and shall be filed with the Director of Procurement, City of Tucson, Arizona. A protest relating to the process for determining the most responsive and responsible proposer shall be filed within ten (10) calendar days after the protestor knows or should have known the basis of the determination. A protest of a proposed award or rejection shall be filed within ten (10) calendar days after the protestor knows or should have known the basis of the protest. The Contract Officer shall respond to a protest within fourteen (14) calendar days after the receipt of the protest. The Procurement Director may grant the Contract Officer an extension for the response if warranted. A request for reconsideration of any and all determinations by the Contract Officer shall be filed with the Procurement Director within seven (7) calendar days after the receipt of the determination.
2. A protest shall include:
  - A. The name, address, and telephone number, including FAX number if available, of the protestor;
  - B. The signature of the protestor or authorized representative;
  - C. Identification of the contract/solicitation;
  - D. A detailed statement of the legal and/or factual grounds of protest including copies and/or citations of relevant documents, and;
  - E. The form of relief requested.
3. If any of the above information is omitted or incomplete, then the Protestor shall be notified, in writing, within two (2) calendar days after that determination, and the Protestor shall have two (2) calendar days in which to remedy the specified problem.
4. The City will not make award prior to the resolution of a protest, or open bids prior to resolution of a protest filed before bid opening unless the Procurement Director determines in writing that it is in the best interests of the City or in keeping with Item 7 of this procedure to do otherwise. Potential contractors will be advised of a pending protest if the protest is filed before award.
5. The Procurement Director may allow for an informal conference on the merits of a protest with all interested parties allowed to attend. Interested parties include all bidders/offerors, and may also include a subcontractor or supplier provided they have a substantial economic interest in a portion of the IFB or RFP.
6. The Procurement Director shall respond "in writing", in detail, to each substantial issue raised in the protest. The Procurement Director has the sole authority to make determinations for the City, and a determination shall be considered final when it is labeled as such. A request for reconsideration will be allowed by the Procurement Director if he determines that data has become available that was not previously known, or that there has been an error of law or regulation.

7. The City may proceed with a procurement when a protest is pending if the City determines that:
  - A. The items to be procured are urgently required;
  - B. Delivery or performance will be unduly delayed by failure to make the award promptly; or
  - C. Failure to make award will otherwise cause undue harm to the grantee for the Federal Government.
  
8. FTA will only entertain a protest that alleges:
  1. The City failed to have or to adhere to its protest procedures, or failed to review a complaint or protest; or
  2. Violations of Federal law or regulation.

A protest to FTA must be filed in accordance with FTA Circular 4220.1F, available from the Contract Officer. Specifically, protestors shall file a protest with FTA Region 9 or FTA Headquarters Office no later than five (5) days after a final decision is rendered under the City's protest procedure. In instances where the protestor alleges that the City failed to make a final determination on the protest, protestors shall file a protest with FTA not later than five (5) calendar days after the protester knew or should have known of the grantee's failure to render a final determination on the protest.

A protest filed with FTA shall:

- A. Include the name and address of the protestor.
- B. Identify the grantee, project number, and the number of the contract solicitation.
- C. Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to have or adhere to protest procedures, failure to review a complaint or protest; or Violation of Federal law or regulation.
- D. Include a copy of the local protest filed with the grantee and a copy of the grantee's decision, if any.

**CITY OF TUCSON DEPARTMENT OF PROCUREMENT**



**CONTRACT 181820**

**ON CALL CIVIL ENGINEERING SERVICES**

**APPENDIX D – SCOPE OF PROFESSIONAL SERVICES**

**181820**  
**ON-CALL CIVIL ENGINEERING SERVICES**

**SCOPE OF SERVICES**

**I. INTRODUCTION**

This scope of work provides for consultant engineering and drafting services on an "as needed" basis. All work shall be performed to City standards, or other standards approved by the City Engineer.

STANDARD SPECIFICATIONS AND DETAILS

The PAG 2015, Volume 1 Standard Specifications and Details are on file in the City Clerk's Office. These Specifications and Details are incorporated herein by this reference and are as much a part of the Contract Documents as if they were attached hereto or as they may be modified herein.

Copies of the above-referenced Standard Specifications and Details may be obtained at the following location:

City/County Standard Specifications and Details for Public Improvements (including City Traffic Engineering and Tucson Water Standard Specifications and Details)

Reproductions Inc.  
234 E 6th Street  
Tucson, AZ 85705-8424  
(520) 622-7747  
Cost: Standard Specifications - Call  
Standard Details - Call

Engineering work may include, but not be limited to, roadway design, drainage design, miscellaneous parkway design, electrical engineering design, preparation of plans and specifications, post design services, and possible review of other consulting engineers' work for the City. It is the City's intent to retain UP TO SIX (6) CONSULTANTS for these services with individual projects being awarded in the best interests of the City based on the qualifications, proposed scope of work and/or potential availability of the firms.

Individual projects assigned under this contract are not expected to exceed \$500,000 unless a waiver is requested of and granted by the Director of Procurement.

Federal Transit Administration (FTA), local and/or Regional Transportation Authority (RTA) funding may be utilized on specific projects under the Contract. Therefore, all FTA, federal, state and local requirements will be followed and the RTA shall be listed as additionally insured and as an additional indemnitee in the resulting contract. FTA Terms and Conditions (Appendix C) are provided as an attachment to this solicitation and will be incorporated into the resulting contract. FTA Terms and Conditions cannot be modified or negotiated.

## **II. CIVIL ENGINEERING SERVICES**

The Consultant shall be expected to provide services within the civil engineering field, including but not limited to, survey, right-of-way analysis, hydrologic and hydraulic analyses, drainage design, roadside design, and utility coordination/design. The Consultant may be expected to prepare technical reports, either for justification or support of a project, such as design concept reports, drainage reports, traffic studies, and environmental determination studies. Some of the recent projects that have been undertaken as part of this type of contract include:

- RTA Bus Pullouts
- RTA Sidewalks
- Federally funded improvement projects
- Developer impact fee roadway widenings
- Staffing assistance for management of design projects
- Staffing assistance for Construction Management

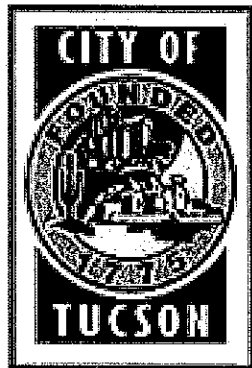
## **III. NON-CIVIL ENGINEERING DESIGN**

This contract may require the need for landscape, electrical, structural, and/or geotechnical services; however, the consultant shall not be required to include any of these specialties on the project team at this time. If and when it is determined that a specific project will require any or all of these services, the consultant will be asked to identify the subconsultant(s) for approval by the City Engineer's Office.

## **IV. RESPONSE TIME**

The consultant shall provide a design fee for each miscellaneous design requested by the City, within ten working days of notification. If necessary, each fee submittal shall be negotiated with the City's Project Manager until a fair and equitable fee is arrived at. Because response time may be critical to the City, continued delays in response time shall be cause to terminate the contract

**CITY OF TUCSON DEPARTMENT OF PROCUREMENT**



**CONTRACT 181820**

**ON CALL CIVIL ENGINEERING SERVICES**

**APPENDIX E – FEE SUMMARY**

**FEE ESTIMATE SUMMARY**

PROJECT: RFQ On Call Civil Engineering Services DATE 16-Jan-18  
 PREPARED BY: EcoPlan Associates, Inc. CONTRACT NUMBER 181820  
 EFFECTIVE DATE 16-Jan-18 PRIME CONTRACTOR WSP USA Inc.  
 CONTRACT TIME \_\_\_\_\_ CONTRACT TYPE \_\_\_\_\_

ITEM NO.	FIRM	Discipline	A B C D			
			Direct Labor Rate	Overhead	Profit	Billing Rate
1	EcoPlan Associates, Inc.	Principal				\$150.66
2	EcoPlan Associates, Inc.	Project Manager				\$146.61
3		Senior A/E				
4		A/E				
5		Designer				
6		CADD				
7	EcoPlan Associates, Inc.	Prof Level IV				\$107.23
8	EcoPlan Associates, Inc.	Prof Level III				\$89.00
9	EcoPlan Associates, Inc.	Prof Level II				\$77.04
10	EcoPlan Associates, Inc.	Prof Level I				\$63.18
11	EcoPlan Associates, Inc.	Survey Crew				\$51.63
12	EcoPlan Associates, Inc.	Clerical / Admin				\$44.23

- Formulas  
 (A) Direct Labor Rate  
 (B) Overhead @ \_\_\_\_% X (A)  
 (C) Profit @ \_\_\_\_% X (A+B)  
 (D) Billing Rate (A+B+C)

**FEE ESTIMATE SUMMARY**

PROJECT: RFQ On Call Civil Engineering Services DATE 1/22/2018

PREPARED BY: Tyler Wilson, Project Accountant, WSP CONTRACT NUMBER 181820

EFFECTIVE DATE 1/22/2018 PRIME CONTRACTOR WSP USA Inc.

CONTRACT TIME \_\_\_\_\_ CONTRACT TYPE \_\_\_\_\_

ITEM NO.	FIRM	Discipline	A	B	C	D
			Direct Labor Rate	Overhead 140%	Profit 10%	Billing Rate
1	WSP USA Inc.	Principal	\$88.67	\$124.14	\$21.28	\$234.09
2	WSP USA Inc.	Project Manager	\$70.67	\$98.93	\$16.96	\$186.56
3	WSP USA Inc.	Senior A/E	\$50.34	\$70.48	\$12.08	\$132.91
4	WSP USA Inc.	A/E	\$35.34	\$49.48	\$8.48	\$93.30
5	WSP USA Inc.	Designer	\$31.81	\$44.53	\$7.63	\$83.98
6	WSP USA Inc.	CADD	\$32.02	\$44.83	\$7.68	\$84.53
7	WSP USA Inc.	Prof Level II - Inspector	\$32.78	\$45.89	\$7.87	\$86.54
8	WSP USA Inc.	Clerical / Admin	\$38.58	\$54.02	\$9.26	\$101.86

**Formulas**

- (A) Direct Labor Rate
- (B) Overhead @ \_\_\_\_ % X (A)
- (C) Profit @ \_\_\_\_ % X (A+B)
- (D) Billing Rate (A+B+C)

**FEE ESTIMATE SUMMARY**

PROJECT: RFQ On Cali Civil Engineering Services DATE 1/19/2018  
 PREPARED BY: Dan Padilla CONTRACT NUMBER 181820  
 EFFECTIVE DATE 1/19/2018 PRIME CONTRACTOR WSP USA Inc.  
 CONTRACT TIME \_\_\_\_\_ CONTRACT TYPE \_\_\_\_\_

ITEM NO.	FIRM	Discipline	A	B	C	D
			Direct Labor Rate	Overhead 192.12%	Profit 10%	Billing Rate
1	Cardno	Principal	84.14	161.65	24.58	270.37
2	Cardno	Project Manager	52.78	101.40	15.42	169.60
3	Cardno	Senior A/E	43.91	84.36	12.83	141.10
4	Cardno	A/E (Survey Manager)	38.46	73.89	11.23	123.58
5	Cardno	Designer	37.13	71.33	10.85	119.31
6	Cardno	CADD	31.49	60.50	9.20	101.19
7	Cardno	Prof Level IV (SUE Manager)	35.20	67.63	10.28	113.11
8	Cardno	Prof Level III (SUE Technician III)	24.50	47.07	7.16	78.73
9	Cardno	Prof Level II (SUE Technician II)	18.73	35.98	5.47	60.19
10	Cardno	Prof Level I (SUE Technician I)	16.36	31.43	4.78	52.57
11	Cardno	Clerical / Admin	22.71	43.63	6.63	72.97
12	Cardno	Survey Crew (2 Person)	52.49	100.84	15.33	168.67

**Formulas**

(A) Direct Labor Rate

(B) Overhead @ \_\_\_\_ % X (A)

(C) Profit @ \_\_\_\_ % X (A+B)

(D) Billing Rate (A+B+C)

**Truck & Equipment**

\*Survey Truck & Equipment \$31/hour

\*Designating Truck & Equipment \$22/hour

\*Vacuum Excavation Truck & Equipment \$78/hour

\*Note: Cardno audited OH separates the vehicle and equipment separately from the audit rate and the truck cost are outlined in the rates above. These rates need to be accounted for in the fully loaded rate base on the audit performed.

**FEE ESTIMATE SUMMARY**

PROJECT: RFQ On Call Civil Engineering Services DATE 1/22/2018

PREPARED BY: Greg Bauer, Arrow Land Survey, Inc. CONTRACT NUMBER 181820

EFFECTIVE DATE 1/22/2018 PRIME CONTRACTOR WSP USA Inc.

CONTRACT TIME \_\_\_\_\_ CONTRACT TYPE \_\_\_\_\_

ITEM NO.	FIRM	Discipline	A	B	C	D
			Direct Labor Rate	Overhead 51%	Profit 11.68%	Billing Rate
1	Arrow Land Survey	A/E RLS	59.30	30.24	10.46	100.00
2	Arrow Land Survey	Prof Level I Survey Tech	32.62	16.63	5.75	55.00
3	Arrow Land Survey	Clerical / Admin	26.68	13.61	4.71	45.00
4	Arrow Land Survey	Survey Crew 3-Man	88.95	45.36	15.69	150.00
5	Arrow Land Survey	Survey Crew 2-Man	77.09	39.32	13.60	130.00

**Formulas**

(A) Direct Labor Rate

(B) Overhead @ \_\_\_\_ % X (A)

(C) Profit @ \_\_\_\_ % X (A+B)

(D) Billing Rate (A+B+C)

**FEE ESTIMATE SUMMARY**

PROJECT: RFQ On Call Civil Engineering Services DATE 1/15/2018

PREPARED BY: Mindy A. Shlmanek, Controller, SGI CONTRACT NUMBER 181820

EFFECTIVE DATE 1/15/2018 PRIME CONTRACTOR WSP USA Inc.

CONTRACT TIME \_\_\_\_\_ CONTRACT TYPE \_\_\_\_\_

ITEM NO.	FIRM	Discipline	A	B	C	D
			Direct Labor Rate	Overhead ____%	Profit ____%	Billing Rate
1	Structural Grace, Inc	Project Manager				198.14
2	Structural Grace, Inc	Senior A/E				188.58
3	Structural Grace, Inc	A/E				139.31
4	Structural Grace, Inc	Designer				109.86
5	Structural Grace, Inc	Prof Level II Inspector - Senior				96.03
6	Structural Grace, Inc	Prof Level I Inspector				76.00
7	Structural Grace, Inc	Clerical / Admin				86.02
8	Structural Grace, Inc	Survey Crew 2-Person				146.25

**Formulas**

(A) Direct Labor Rate

(B) Overhead @ \_\_\_\_ % X (A)

(C) Profit @ \_\_\_\_ % X (A+B)

(D) Billing Rate (A+B+C)

**CITY OF TUCSON DEPARTMENT OF PROCUREMENT**



**CONTRACT 181820**

**ON CALL CIVIL ENGINEERING SERVICES**

**APPENDIX F – INSURANCE**





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/1/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Arthur J. Gallagher Risk Management Services, Inc. 250 Park Avenue, 5th Floor New York NY 10177	<b>CONTACT NAME:</b> AJG Service Team <b>PHONE (A/C, No, Ext):</b> 212-981-2485 <b>E-MAIL ADDRESS:</b> GGB.WSPUS.CertRequests@ajg.com	<b>FAX (A/C, No):</b> 212-994-7074
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> WSPGLOB-01 WSP USA Inc. One Penn Plaza New York, NY 10119	<b>INSURER A:</b> Zurich American Insurance Company	<b>NAIC #</b> 16535
	<b>INSURER B:</b> Liberty Insurance Corporation	<b>NAIC #</b> 42404
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER:** 1458888063                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	GLO983581904	4/1/2017	4/1/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	AS7621094060037	4/1/2017	4/1/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$						OCCUR CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WA762D094060017(AOS)	4/1/2017	4/1/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$2,000,000 E.L. DISEASE - EA EMPLOYEE \$2,000,000 E.L. DISEASE - POLICY LIMIT \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

THIRTY (30) DAYS NOTICE OF CANCELLATION.  
RE: Project Description: City of Tucson - On Call Civil Engineering Services| Client Project Number: 181820.  
City and the Regional Transportation Authority (RTA) are Additional Insureds as respects General Liability, Auto Liability policies, pursuant to and subject to the policy's terms, definitions, conditions and exclusions. The insurance provided in the General Liability policy is primary and any other insurance shall be excess, and not contributing. Waiver of Subrogation applies to Additional Insured, as respects General Liability policy, Auto Liability and Workers Compensation policies pursuant to and subject to the policy's terms, definitions, conditions and exclusion.

<b>CERTIFICATE HOLDER</b> City of Tucson 255 W. Alameda, 6th Floor Tucson AZ 85701	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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# Additional Insured -Automatic- Owners, Lessees Or Contractors

**ZURICH**

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO 9835819 04	04/01/2017	04/01/2018		65400000	INCL	

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Named Insured:**

**Address (including ZIP Code):**

This endorsement modifies insurance provided under the:

**Commercial General Liability Coverage Part**

A. Section II - **Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section **IV-Commercial General Liability Conditions**:

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the other Insurance Condition of Section **IV – Commercial General Liability Conditions**:

**Primary and Noncontributory insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
  - b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.
2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section **IV-Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section **III-Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.

## WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Not applicable in Alaska, Kentucky, New Hampshire, New Jersey

This waiver does not apply to any right to recover payments which the Minnesota Workers Compensation Reinsurance Association may have or pursue under M.S. 79.36.

### Schedule

Where required by contract or written agreement prior to loss and allowed by law.

In the states of Alabama, Arizona, Arkansas, Colorado, Delaware, Dist. Of Col, Georgia, Idaho, Illinois, Indiana, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, West Virginia, the premium charge is 0% of the total manual premium, subject to a minimum premium of \$0 per policy.

In the states of Connecticut, Florida, Iowa, Maryland, Nebraska, Oregon, the premium charge is 1% of the total manual premium subject to a minimum premium of \$250 per policy.

In the state of Hawaii, the premium charge is \$5,462 and determined as follows: The premium charge for this endorsement is 1% of the total manual premium, subject to a minimum premium of \$250 per policy.

In the state of Louisiana, the premium charge is 2% of the total standard premium subject to a minimum premium of \$250 per policy.

In the state of Massachusetts, the premium charge is 1% of the total manual premium.

In the state of New York, the premium charge is 2% of the total manual premium, subject to a minimum premium of \$250 per policy.

In the state of North Carolina, the premium charge is 2% of the total manual premium subject to a minimum premium of \$100 per policy.

In the state of Virginia, the premium charge is 5% of the total manual premium, subject to a minimum premium of \$250 per policy.

Issued by Liberty Insurance Corporation 21814

For attachment to Policy No. WA7-62D-094060-017      Effective Date      Premium \$

Issued to WSP USA Corporation



Policy Number: AS7-621-094060-037  
issued by: Liberty Insurance Corp.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DESIGNATED INSURED - NONCONTRIBUTING**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIERS COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage form.

**Schedule**

**Name of Person(s) or Organizations(s):**

Any person or organization whom you have agreed in writing to add as an additional insured, but only to coverage and minimum limits of insurance required by the written agreement, and in no event to exceed either the scope of coverage or the limits of insurance provided in this policy.

**Regarding Designated Contract or Project:**

Each person or organization shown in the Schedule of this endorsement is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

**The following is added to the Other Insurance Condition:**

If you have agreed in a written agreement that this policy will be primary and without right of contribution from any insurance in force for an Additional Insured for liability arising out of your operations, and the agreement was executed prior to the "bodily injury" or "property damage", then this insurance will be primary and we will not seek contribution from such insurance.



POLICY NUMBER: AS7-621-094060-037

COMMERCIAL AUT  
CA 04 44 10 13



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### **SCHEDULE**

**Name(s) Of Person(s) Or Organization(s):**

Any person or organization for whom you perform work under a written contract if the contract requires you to obtain this agreement from us, but only if the contract is executed prior to the injury or damage occurring.

Premium: \$ INCL

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

# Blanket Notification to Others of Cancellation or Non-Renewal

**ZURICH**

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO 9835818 04	04/01/2017	04/01/2018		65400000	INCL	

## THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

### Commercial General Liability Coverage Part

- A.** If we cancel or non-renew this Coverage Part by written notice to the first Named Insured, we will mail or deliver notification that such Coverage Part has been cancelled or non-renewed to each person or organization shown in a list provided to us by the first Named Insured if you are required by written contract or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to the first Named Insured. Such list:
1. Must be provided to us prior to cancellation or non-renewal;
  2. Must contain the names and addresses of only the persons or organizations requiring notification that such Coverage Part has been cancelled or non-renewed; and
  3. Must be in an electronic format that is acceptable to us.
- B.** Our notification as described in Paragraph **A.** of this endorsement will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to the first Named Insured. We will mail or deliver such notification to each person or organization shown in the list:
1. Within seven days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
  2. At least 30 days prior to the effective date of:
    - a. Cancellation, if cancelled for any reason other than nonpayment of premium; or
    - b. Non-renewal, but not including conditional notice of renewal.
- C.** Our mailing or delivery of notification described in Paragraphs **A.** and **B.** of this endorsement is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
1. Extend the Coverage Part cancellation or non-renewal date;
  2. Negate the cancellation or non-renewal; or
  3. Provide any additional insurance that would not have been provided in the absence of this endorsement.
- D.** We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs **A.** and **B.** of this endorsement.

All other terms and conditions of this policy remain unchanged.