

CITY OF TUCSON
NOTICE OF REQUEST FOR QUALIFICATIONS NO. 100524
ON-CALL PROFESSIONAL CONSTRUCTION ADMINISTRATION SERVICES

Notice is hereby given that the City of Tucson, hereinafter referred to as "COT" is conducting a competitive ONE-STEP process to retain UP TO THREE (3) CONSULTANTS to provide **ON-CALL PROFESSIONAL CONSTRUCTION ADMINISTRATION SERVICES** primarily for the Transportation Department. Federal Transit Administration (FTA), local and/or Regional Transportation Authority (RTA) funding may be utilized on individual 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 on the resulting contract. FTA Terms and Conditions are provided as an attachment to this solicitation and will also be incorporated into the resulting contract with signed FTA Certifications being required at time of contract negotiation.

COT invites interested firms to submit written Statements of Qualifications relating to this solicitation. A Screening Committee will evaluate firms' qualifications and experience with similar projects. The firms determined to be best qualified will then be invited to enter into negotiations with COT for billing rates under the contract.

City of Tucson Affirmative Action Program requirements/procedures will be in effect. All firms interested in performing professional services for the City of Tucson must annually file an Affirmative Action Plan with the City of Tucson Office of Equal Opportunity Programs (OEOP). Please contact OEOP at 791-4593 to verify that your plan is still in effect or if you require additional information relative to filing an Affirmative Action Plan.

A complete copy of this Request for Qualifications (RFQ) and possible amendments may be obtained from our website at: www.tucsonaz.gov/procure. Internet access is available at all public libraries. Any interested offerors without Internet access may obtain a copy of this solicitation by calling (520) 791-4704, or a copy may be picked up during regular business hours at the Department of Procurement, 255 W. Alameda, 6th Floor West, Tucson, AZ. Respondents are invited to review the information and to submit their Statements of Qualifications in accordance with the criteria established within this RFQ. Written questions regarding this RFQ must be received by the Department of Procurement no later than five (5) days before opening. Questions may then be responded to by written amendment to this document. Oral statements or instructions shall not constitute an amendment to the RFQ.

All submittals must be received by the due date and at the submittal location specified herein. **Any response received at the specified submittal location after the due date and time assigned will be returned unopened.** The City of Tucson reserves the right to reject any or all submittals, or to withhold the award for any reason it may determine, and to waive or not to waive any informalities in any submittal. All information regarding the content of the specific submittals will remain confidential until a contract is finalized or all proposals are rejected.

SUBMITTAL DUE DATE: August 4, 2010 AT 4:00 P.M. LOCAL AZ TIME
SUBMITTAL LOCATION: Department of Procurement
255 W. Alameda, 6th Floor, Tucson, AZ 85701
P.O. Box 27210, Tucson, AZ 85726-7210

PRE-SUBMITTAL CONFERENCE DATE: July 26, 2010
TIME: 10:00 A.M. – 11:00 A.M., LOCAL AZ TIME
LOCATION: PUBLIC WORKS BLDG. 4TH FLOOR
LARGE CONFERENCE ROOM,
201 N. STONE, TUCSON AZ

QUESTIONS SHALL BE DIRECTED TO: Matt Hausman, Principal Contract Officer
520.837.4123
matt.hausman@tucsonaz.gov

July 14th & July 21st, 2010
Publish Dates

ON-CALL CONSTRUCTION ADMINISTRATION SERVICES SCOPE OF SERVICES

I. INTRODUCTION

The City of Tucson (COT) is conducting a competitive ONE-STEP process to retain UP TO THREE (3) CONSULTANTS to provide ON-CALL CONSTRUCTION ADMINISTRATION SERVICES primarily for the Transportation Department. 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 on the resulting contract. FTA Terms and Conditions are provided as an attachment to this solicitation and will also be incorporated into the resulting contract with signed FTA Certifications being required at time of contract negotiation.

A basic assumption for this scope of work is that the Consultant will work for and report to the City's Field Engineering Manager and will provide construction administration and technical support services to augment the City's Field Engineering Team.

The Consultant will assist the City in the management and implementation of the Projects during the pre-construction, construction, and post-construction phases on an "as needed" basis. The Consultant's services may include, but not be limited to, services listed in the Scope of Services section of this solicitation.

NOTE: The Consultant's services undertaken under the resulting Contract may include assistance with existing planning/design projects. Firms currently involved in any COT planning/design projects are not specifically excluded from submitting but may be ineligible for specific projects if awarded a Contract.

The Consultant will supply full and part-time staff to augment the City Field Engineering Team to complete the work tasks as required.

Individual projects under the resulting contract will not exceed \$250,000 unless a waiver is requested of and granted by the Director of Procurement. The annual estimate for the first year of the contract is \$750,000 (\$250,000 per contract).

The resulting contract will be for ONE (1) year with THREE (3) potential one-year renewal options.

A. COOPERATIVE PURCHASING

Any contract resulting from this solicitation shall be for the use of the City of Tucson. In addition, public agencies that have entered into a Cooperative Purchasing Agreement with the City's Department of Procurement may be eligible to participate in any resultant contract. Use of any resultant City contract by a public agency is subject to the agreement of the Contractor to provide the contracted goods or services to the public agency.

Any orders placed to or services required by the successful contractor 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 incidental expenses incurred as a result of the agency's participation, e.g., shipping costs and travel expenses. The contractor's payment and performance bonds and insurance certifications filed with the City are not transferable to the participating agency. The agency must make its own bonding and insurance arrangements with the contractor. The City shall not be responsible for any disputes arising out of transactions made by others.

The successful contractor(s) shall provide an electronic copy of the complete contract (includes any contract amendments) to the City of Tucson Department of Procurement, upon request from the City. At the City's request, the successful contractor(s) will provide an electronic copy of the complete contract to a participating agency.

II. SCOPE OF SERVICES

What follows is an outline of potential services that could be undertaken as part of the resulting contract. The anticipated tasks include but are not limited to:

A. Key Staff

Consultants will be prepared to provide certain Key Staff Members necessary to perform all construction administration services particular to individual projects. Key staff positions may include:

Project Manager/Firm Representative

The Project Manager/Firm Representative will manage the City contract and be the point of contact for coordination of services.

Resident Engineer

The Resident Engineer proposed for work under this contract shall be registered as a Civil Engineer in the State of Arizona or an approved field. The Resident Engineer has detailed responsibilities for technical compliance and administration of individual or multiple construction contracts. The Resident Engineer shall also verify that all the contract terms and conditions are enforced; all contractual actions are accurately and adequately documented; and, all interfacing with other entities are properly coordinated and documented.

Depending on project need the Resident Engineer and other appropriate key personnel identified by the City shall be available to begin work within one week of the execution of this Agreement or as otherwise authorized by the City.

Supervising Inspector

The Supervising Inspector proposed for work under his contract shall be highly knowledgeable in analyzing, evaluation, researching, reading and interpreting a variety of technical engineering data that includes highway construction plans, field survey data and quality control documentation. This supervisor must have a minimum of 10 years current experience on similar work and plans. It is essential that the Supervising Inspector possess skills in oral and written communications to fully perform this task. Communications will include interpersonal relations as applied to contacts with contractors, City staff, and representatives of other governmental

jurisdictions and in building partnerships. The Supervising Inspector must also possess skills in organizing and prioritizing work assignments.

Construction Inspectors

Construction Inspectors must have at least 2 years of experience in inspecting, sampling, testing, and documenting construction activities. Inspectors must possess certifications related to specific task assignments issued by organizations such as the American Concrete Institute (ACI), the Arizona Technical Testing Institute (ATTI), the International Code Council (ICC), American Traffic Safety Services Association (ATSSA), and the International Municipal Signal Association (IMSA). Construction Inspectors shall monitor and review the quality and quantity of construction with the objective of protecting the interest of the City. Inspectors shall verify that the work and materials are in full compliance with the construction contract documents and shall not authorize deviations from the documents.

B. Professional Construction Administration Services

Professional Construction Administration Services may include, but are not limited to the following tasks as they will be applied to roadway, highway and/or transit projects:

- a. Providing complete construction contract administration;
- b. Provide constructability reviews of design submittals and schedules;
- c. Prepare a Resident Engineers Manual;
- d. Prepare a Quality Assurance Manual;
- e. Assist the City in assembling and advertising construction documents for contractor procurement, and analysis of contractor proposals;
- f. Attending Pre-construction conference, recording and drafting meeting minutes for filing;
- g. Reviewing and drafting supplemental work authorizations and construction change order's for the City's approval;
- h. Review and provide processing for Contractor Requests for Information to the City and/or the Engineer of Record;
- i. Reviewing and processing of all required Contractor submittals;
- j. Performing all construction inspections and prepare inspection reports and providing the City with copies of all correspondence;
- k. Reviewing and submitting all Contractor's pay estimates for City review and perform cost progress reports and cost tracking projections;
- l. Conducting weekly construction progress meetings, digitally recording, transcribing or providing written summary minutes, distributing and filing such records of the proceedings;
- m. Reviewing, correcting and annotating, and returning Contractor provided meeting minutes;
- n. Attending meetings with the City during the course of the project;
- o. Coordinating with associated utility companies, other jurisdictional agencies, and adjacent and affected landowners and businesses;
- p. Developing project sampling and testing checklist, coordinating Quality Assurance testing services and verifying contract compliance;
- q. Providing detailed monthly construction progress reports and progress photos to the City;
- r. Documenting and recording all design changes to the original bid set of plans;

- s. Reviewing Contractor As-Built and Record Drawings for accurate and adequate reflection of the Work;
- t. Preparing and/or managing record drawings;
- u. Submitting a full set of records and record drawings at project completion;
- v. Monitoring for permit and environmental compliance;
- w. Review and coordination of Contractor's construction schedule in Microsoft Project Software;
- x. Review and coordination of Contractor's construction phasing activities;
- y. Review and coordination of Contractor's detour and traffic control plans;
- z. Review the Contractor's construction progress and perform projections based on the project's phasing plan and accepted schedules;
- aa. Project Document Control, including receiving, filing, and distributing incoming and outgoing documents including electronic and hardcopy files;
- bb. Public involvement and Communications Support;
- cc. Assist the City with FTA and/or RTA reporting and project updates.

III. Distribution of Work/Assignments

It is expected that all work assignments will be distributed on a rotating sequential basis. However, the City of Tucson reserves the right to distribute work assignments in a fashion that is in the best interests of the City.

INSTRUCTIONS TO OFFERORS

- 1. PRE-SUBMITTAL CONFERENCE:** The date and time of a prospective pre-submittal conference, if applicable, is indicated on the cover page of this document. The purpose of this conference will be to clarify the contents of this solicitation in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this solicitation or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine the appropriate action necessary, if any, and may issue a written amendment to the solicitation. Oral statements or instructions will not constitute an amendment to this solicitation.
- 2. SUBMITTAL FORMAT: Original and 3 copies (4 total) of each submittal** should be turned in to Procurement, on any required forms and in the format specified in the solicitation. The original copy of the submittal should be clearly labeled "Original" and shall be unbound and single-sided. The material should be in sequence and related to the solicitation. **The sections of the submittal should be tabbed and clearly identifiable.** The City will not provide any reimbursement for the cost of developing or presenting the submittals in response to this solicitation. Failure to include any requested information may have a negative impact on the evaluation and/or may result in the rejection of the offeror's submittal.
- 3. WHERE TO SEND SUBMITTALS:** In order to be considered, the offeror must complete and send their submittal to the City of Tucson Department of Procurement at the 6th Floor, 255 West Alameda, Tucson, Arizona 85701 (mailing address: P.O. Box 27210, Tucson, AZ 85726-7210). The submittal must be received by no later than the specified opening date and time. The offeror's submittal shall be presented in a sealed envelope with the OFFEROR'S NAME and RETURN ADDRESS written on the envelope. The words "SEALED SUBMITTAL" with SERVICE DESCRIPTION, SOLICITATION NUMBER, DATE, AND TIME of SUBMITTAL OPENING shall be written on the envelope.
- 4. INQUIRIES:** Any question related to this solicitation shall be directed to the Contract Officer whose name appears on the front side of this document. **The offeror shall not contact or ask questions of the department for whom the requirement is being procured.** Questions should be submitted in writing when time permits. The Contract Officer may require any and all questions to be submitted in writing at the Contract Officer's sole discretion. Any correspondence related to a solicitation should refer to the appropriate Solicitation number, page and paragraph number. However, the offeror must not place the number on the outside of an envelope containing questions since such an envelope may be identified as a sealed submittal and may not be opened until after the official submittal due time and date. Oral interpretations or clarifications will be without legal effect. Only questions answered by formal written solicitation amendment will be binding.
- 5. CONTRACT NEGOTIATIONS:** At the completion of the evaluation process, the City may enter into negotiations with the top ranked Offeror to determine fees, and to negotiate any other portion of the Contract deemed by the City to be necessary. In the event that the City is not able to negotiate successfully with the top ranked Offeror, the City shall cease negotiations with that Offeror and either begin negotiations with the next ranked Offeror or may choose to cancel the solicitation in its entirety. In the event that the City is not able to negotiate successfully with the next ranked Offeror, the City shall cease negotiations with that Offeror and either begin negotiations with the third ranked Offeror or may choose to cancel the solicitation in its entirety. Award shall be made by the Procurement Director to the Offeror whose submittal and subsequent negotiation is most advantageous to the City.

6. AWARD OF CONTRACT: Notwithstanding any other provision of the solicitation, the City reserves the right to:

- (1) waive any immaterial defect or informality; or
- (2) reject any or all offers, or portions thereof; or
- (3) reissue the solicitation.

A response to this solicitation is an offer to enter into negotiations and contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Submittals do not become contracts unless and until they are executed by the City's Director of Procurement. All of the terms and conditions of the solicitation shall be incorporated in the Contract, unless any of the terms and conditions are modified by a solicitation amendment, a contract amendment, or by mutually agreed terms and conditions in the final contract documents.

7. FAMILIARIZATION OF SCOPE OF WORK: Before signing a contract, each Offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting performance of work. It shall carefully correlate its observations with requirements of the solicitation and negotiated contract and otherwise satisfy itself as to the expense and difficulties attending the performance of the work. The signing of a Contract will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the Contract, for lack of such familiarization.

8. LATE PROPOSALS: In accordance with Tucson Procurement Code, Article III. Sec. 28-17(3). *Late Bids.* Late submittals shall not be considered.

9. WITHDRAWAL OF SUBMITTAL: At any time prior to a specified solicitation due time and date an offeror (or designated representative) may withdraw the proposal by submitting a written request stating the reason for withdrawal.

10. AMENDMENT OF SOLICITATION: The Offeror shall acknowledge receipt of a solicitation amendment by signing and returning the document by the specified due time and date.

11. SUBMITTAL: The offer and any solicitation amendments must be signed and returned with the offeror's submittal.

12. CONFIDENTIAL INFORMATION: If a person believes that any portion of a submittal, offer, specification, protest, or correspondence contains information that should be withheld, then the Procurement Director should be so advised in writing. The City shall review all requests for confidentiality and provide a written determination. If the confidential request is denied, such information shall be disclosed as public information, unless the person utilizes the "Protest" provision.

13. SUBCONSULTANTS: During negotiations, offeror must disclose in writing any sub-consultant to be utilized in performance of services herein. For each sub-consultant, detail on respective qualifications must be included.

- 14. UPON NOTICE OF INTENT TO AWARD:** The apparent successful offeror shall sign and file with the City, within ten (10) days after Notice of Intent to Award, all documents necessary to the successful execution of the contract.
- 15. EXCEPTIONS TO CONTRACT PROVISIONS:** A response to any Request for Qualifications is an offer to contract with the City based upon the contract provisions contained in the City's Request for Qualifications, including but not limited to, the specifications, scope of services and any terms and conditions. Offerors who wish to propose modifications to the contract provisions must clearly identify the proposed deviations and any proposed substitute language in their submittal. However, the provisions of the Request for Qualifications cannot be modified without the express written approval of the Director of Procurement or his designee. Proposed modifications or exception to the indemnification language herein shall not be considered. If an offer is returned with modifications to the contract provisions that are not expressly approved in writing by the Director of Procurement or his designee, the contract provisions contained in the City's Request for Qualifications shall prevail.
- 16. VENDOR APPLICATION:** Prior to the award of a contract, the successful offeror shall have a completed vendor application on file with the Department of Procurement.

SELECTION PROCESS

The selection process is provided below for both one-step and two-step solicitations:

I. One-Step - Statement of Qualifications (SOQ)

For One-Step solicitations, a qualified committee will evaluate the SOQ's submitted and determine the offeror(s) most qualified to enter into negotiations for a contract.

II. Two-Step – Presentation/Interviews

Under a Two-Step process, a qualified committee will short-list the offerors based on the SOQ with the short-listed offerors being invited to participate in Presentations/Interviews with the intent of selecting the most qualified firm to enter into negotiations for a contract.

Under a Two-Step process, scoring will not be cumulative from the short-listing to the second-step (Presentations/Interviews). Scoring criteria for the Presentations/Interviews may be different from the first step as stated herein. The committee shall rank the firms on the stated criteria with the intent of entering into negotiations with the highest qualified firm for each contract.

In addition, scoring criteria for the Presentation/Interviews may be different from the first-step with the committee making its final selection following the second-step.

I. STATEMENT OF QUALIFICATIONS (SOQ)

All submittals shall include any and all forms provided in this solicitation package. It is permissible to copy these forms as required. Facsimiles, telegraphic proposals, or mailgrams shall not be considered. The offer form shall be submitted with a signature by the person authorized to sign the submittal. Erasures, interlineations, or other modifications in the submittal shall be initialed by the person authorized to sign the submittal. Periods of time, stated as a number of days, shall be in consecutive calendar days. It is the responsibility of all offerors to examine the entire solicitation package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before sending in a submittal. Negligence in preparing a submittal confers no right of withdrawal after due date and time.

Submittal for the projects shall be limited to the items listed below. Firms are advised to follow guidelines and submit only the requested information.

A) Cover Letter

B) Evaluation Criteria

C) DBE Preference Points – Offerors shall submit a copy of their DBE certification with the solicitation response if seeking preference points as the Prime Consultant. In addition, Offerors seeking preference points for utilizing eligible certified sub-consultants shall submit a copy of the sub-consultants certification as well as the following:

1. Description of the commercially useful function the sub-consultant will be performing

2. An approximation of the percentage of the anticipated scope of services (must be greater than 10%).

Preference Points shall be added to each committee members total score following the evaluation process.

D) AFFIRMATIVE ACTION PLAN/AFFIRMATIVE ACTION FORMS STATEMENT OF COMPLIANCE

E) Offer Page

A. COVER LETTER

Expressing interest in the project and identifying a single individual as point of contact for any future correspondence. (Suggested 2 Pages maximum)

B. EVALUATION CRITERIA

Firms will be screened based on evaluation of the following criteria, which are listed in relative order of importance:

- Available Resources – 30 PTS
- Experience and Qualifications of the Team – 25 PTS
- Qualifications of the Firm –20 PTS
- Firm Experience on Similar Projects – 15 PTS
- Past Performance (see below) – 10 PTS

1. AVAILABLE RESOURCES TO COMPLETE THE PROJECT (INCLUDING EVALUATION OF ORGANIZATIONAL CHART)

The Consultant should describe the analytical tools, resources or methodologies commonly used by their firm that may be applicable to the project categories. Indicate the availability of the resources. Submit a typical Organizational Chart of personnel to be assigned to a project together with the specific aspects of the project to which the designated individual will be involved. The chart should show the estimated time commitments of the Project Manager, Resident Engineer and Supervising Inspector as a percentage of the unit total time for a project. The chart should clearly show if team members are from local or other offices or from associated firms. Describe internal measures that will be used to ensure timely completion. Describe current workload and its ability to complete these services in a timely manner.

2. EXPERIENCE & QUALIFICATIONS OF THE TEAM (INCLUDING PROJECT MANAGER & RESIDENT ENGINEER)

In this section, the Consultant shall discuss the key members of the Project Team and their qualifications and experiences including any licenses, registrations or certifications applicable to the proposed work. Identify team experience on similar projects and the extent of team involvement including time commitment. Describe experience and qualifications of the team in the following areas:

- Construction administration of projects designed to Pima County/City of Tucson standards
- Construction administration of projects designed to Federal standards
- Construction administration of structures and facilities associated with transportation projects.
- Construction administration of underground utility facilities
- Team members previous experience working together on projects
- Team members previous experience with public involvement and communications

3. QUALIFICATIONS OF THE FIRM

The Consultant shall submit qualifications of the firm and explain why your firm is especially well qualified to perform the required services. Please identify the internal policies and procedures that will be used to assure a quality product and completion of the remedial action on schedule and within budget. Include qualifications of any critical subconsultants or subcontractors.

4. FIRM EXPERIENCE ON SIMILAR PROJECTS

In this section, the Consultant shall provide the experience of the firm on similar projects. Identify type and location of similar work to illustrate the work quality. List up to THREE (3) specific references that may be contacted. Demonstrate the following:

- Experience on as-needed construction administration services contracts
- Experience providing construction administration services for accelerated schedules
- Experience on City of Tucson and other local public construction projects

5. PAST PERFORMANCE

Past Performance shall be scored by the committee based upon all information from City Departments, Project Managers, outside agencies, and references provided by the consultant. No response specific to this criteria is required.

C. DBE PREFERENCE POINTS

Offerors shall submit a copy of their DBE certification with the solicitation response if seeking preference points as the Prime Consultant. In addition, Offerors seeking preference points for utilizing eligible certified sub-consultants shall submit a copy of the sub-consultants certification as well as the following:

1. Description of the commercially useful function the sub-consultant will be performing
2. An approximation of the percentage of the anticipated scope of services (must be greater than 10%).

Disadvantaged Business Enterprise (DBE) Program:

The Disadvantaged Business Enterprise (DBE) Program is implemented as part of the City of Tucson's responsibility as a recipient of federal financial assistance from the U.S. Department of Transportation (DOT). The DBE program and policies are codified in 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 DOT-assisted contracts to read and become familiar with this part of the Code of Federal Regulations.

Only firms that are certified under the Arizona Unified Certification Program (AZUCP), at the time the solicitation is due, are eligible to receive a DBE preference for City of Tucson projects that are funded wholly or in part by the US DOT.

The AZUCP Directory contains the *complete* listing of those firms currently certified and eligible to participate as a DBE on these projects. The AZUCP database can be accessed through www.azdbe.org. If the name of a firm does not appear in the current AZUCP directory, it shall be the respondent's responsibility to ascertain the certification status of the firm with the City of Tucson's Office of Equal Opportunity Programs at (520) 791-4593.

Preference Points

In the evaluation of a Request for Qualifications for professional design services, the City may apply a maximum of ten (10) preference points for the use of DBE certified firms.

(1) DBE Certification of the Prime Consultant.

Four preference points will be awarded to a Certified Disadvantaged Business Enterprise (DBE) who submits a response as a prime consultant to a Request for Qualifications as a DBE. To be eligible for any certification points, a firm must be certified prior to the submittal due date and a copy of the certification must be submitted with the solicitation response.

(2) DBE Certification of a Subconsultant.

The solicitation may include an award of preference points for the use of certified, Disadvantaged Business Enterprise (DBE) firms as subconsultants to the prime under a Request for Qualifications.

For each eligible certified subconsultant included in the proposed team, the prime consultant may receive two preference points with a maximum of ten preference points total awarded for an eligible, certified prime consultant (if applicable under section 1) and/or eligible, certified subconsultants.

(3) Eligibility for Preference Points:

To be eligible for any certification points, the proposed subconsultant must:

- (a) be performing a commercially useful function in accordance with Section 28-147(6) of the Tucson Procurement Code;
- (b) be expected to perform at least ten percent (10%) of the anticipated scope of services as determined by the City; and
- (c) be certified prior to the submittal due date; a copy of the certification shall be submitted with the solicitation response.

(4) Substitution of a Subconsultant.

Award of preference points for an eligible, certified subconsultant under section (3)(b) shall act as certification that the work shall be performed by the listed subconsultant. Substitutions may be allowed at the discretion of the Director, for reasons including but not limited to, subconsultant non-responsiveness, insolvency, or any other reason deemed by the Director to be in the best interest of the City.

(5) Application of Preference Points.

Preference points shall be awarded as part of the evaluation for selecting firms under a one-step process, and only for screening firms in the two-step process to advance to the second phase.

When a solicitation for a specific project(s) includes preference points for the use of certified subconsultants, Consultants may seek to maximize awarded points through the prime consultant's certification and the use of certified subconsultants or entirely through the use of certified subconsultants. However, not all solicitations will lend themselves to the application of the maximum number of points.

As a general rule, solicitations for on-call services, will only include points for the prime consultant's certification due to the unknown quantity and scope of services to be required under the contract and the inability to predict compliance with section (3)(b) above.

D. AFFIRMATIVE ACTION PLAN/AFFIRMATIVE ACTION FORMS STATEMENT OF COMPLIANCE

City of Tucson Affirmative Action Program requirements/procedures will be in effect. All firms interested in performing professional services for the City of Tucson must annually file an Affirmative Action Plan with the City of Tucson Office of Equal Opportunity Programs. Please contact the Office of Equal Opportunity Programs at (520) 791-4593 to verify that your plan is still in effect or if you require additional information relative to filing an Affirmative Action Plan. Consultants must sign and submit the compliance statement below confirming that an approved Affirmative Action Plan is currently on file or has been filed prior to the submittal deadline.

To be considered for this project, firms are required to have on file with the City of Tucson Office of Equal Opportunity Programs a copy of the following three Affirmative Action forms (It may be necessary to file new forms only in the event that the forms currently on file have expired):

- (1) Current AA Plan
- (2) AA Questionnaire
- (3) Employment Utilization Report

STATEMENT OF COMPLIANCE

AFFIRMATIVE ACTION PLAN/ AFFIRMATIVE ACTION FORMS

An Affirmative Action Plan is on file or was placed on file prior to the submittal due date, with the City of Tucson. The required Affirmative Action Forms are up to date and on file with the Office of Equal Opportunity Programs.

Signature and Title

Date

Printed Name and Title

E. OFFER PAGE

Providing contact information and signed requiring that the selected firm agree to enter into negotiations with the City to provide the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the solicitation.

II. PRESENTATIONS/INTERVIEWS

Not Applicable on this One-Step selection.

SPECIAL TERMS AND CONDITIONS

- 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 PROVISIONS

COVERAGE AFFORDED

Worker's Compensation

Commercial General Liability
Insurance
Including:

- A. Products & Completed Operations
- B. Blanket Contractual
- C. Premises-Operations-Personal Injury

Professional Liability
Insurance (Errors and Omissions)
(See Special Conditions)

LIMITS OF LIABILITY

Statute

\$1,000,000 – Bodily Injury
Combined Single Limit
\$100,000 Property Damage

\$500,000 (Minimum)
Combined Single Limit

The following Automobile Liability Insurance coverage will also be required for all professional services contracts which include surveying and/or construction surveillance.

Comprehensive Automobile Liability
Insurance including: non-owned, and
Hired vehicles

\$1,000,000 - Bodily Injury
Combined Single Limit
\$100,000 Property Damage

SPECIAL CONDITIONS:

1. THE CITY OF TUCSON & REGIONAL TRANSPORTATION AUTHORITY WILL BE ADDED AS ADDITIONAL INSURED UNDER THE COMMERCIAL GENERAL LIABILITY AND COMPREHENSIVE AUTOMOBILE LIABILITY POLICIES.
 2. Policies will not be cancelled or reduced in coverage without ten (10) days written notice to the City of Tucson, Department of Procurement, A/E Contracts Division, P.O. Box 27210, Tucson, Arizona 85726-7210.
 3. Deductibles will be stated on the certificate of insurance and are subject to the review and approval of the City.
 4. Professional liability insurance limits will be increased for projects or contracts based upon the degree of risk to which the City is exposed.
 5. 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.
- OTHER CONTRACTS:** The City may, as its sole option, enter into Contracts for additional work related to this project. The Consultant shall fully cooperate with other contractors and consultants and with City employees to accommodate such

other work. The Consultant shall not commit or permit any act that interferes with the performance of such work by other contractors.

- 4. COMPENSATION AND METHOD OF PAYMENT:** In consideration of the performance of the services described in the Scope of Services, the City shall pay the Consultant in accordance with the negotiated contract rates, and the Consultant shall charge the City only in accordance with those same rates.

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. 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.

- 6. AMENDMENTS:** Amendments may be obtained from the City of Tucson website at: www.tucsonaz.gov/procure. It is the bidder's responsibility to obtain a copy of any amendment relevant to this solicitation. Internet access is available at all public libraries. Any interested bidders without internet access may obtain a copy of this solicitation by calling (520) 791-4217, or a copy may be picked up during regular business hours at the Department of Procurement, 255 W. Alameda, 6th Floor West, Tucson, AZ. The City of Tucson takes no responsibility for informing recipients of changes to the original solicitation document. Failure to submit signed amendments with the bid response may be grounds for deeming submittal non-responsive.

STANDARD TERMS AND CONDITIONS

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of submittal as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the offeror fails to provide recommended information, the City may, at its sole option, ask the offeror to provide the information or evaluate the submittal without the information.

May: Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions shall apply:

- A. **City** - The City of Tucson, Arizona, 255 W. Alameda, Tucson, AZ 85701
- B. **Agency or User Department** – Used interchangeably to mean the City department or division responsible for managing the professional services contract for the project.
- C. **Consultant or Firm** – Used interchangeably in referring to the architect, engineer, geologist, landscape architect, or land surveyor organization offering professional services to the City of Tucson.
- D. **Evaluation Committee** – The committee established to formally evaluate proposals according to the evaluation criteria listed herein.
- E. **Joint Venture** – Two or more persons or entities combining their property, money, skills, and knowledge to form a distinct legal entity to carry out a single business enterprise for profit, pursuant to a written agreement.
- F. **Contract** - The legal agreement executed between the City of Tucson, AZ and the Consultant/Firm.
- G. **City Project Manager** - The City employee specifically designated as responsible for monitoring and overseeing the Consultant's performance under this Contract. Also referred to as City Designated Contract Representative.
- H. **Director of Procurement** - The contracting authority for the City of Tucson, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Tucson, AZ.

2. **NOTICE TO PROCEED:** The Consultant agrees to render professional services promptly and diligently upon receipt of written notice to proceed with any or all of the services set forth herein.

3. **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 Consultant or any and all of Consultant's sub-consultants. Said audit shall be limited to this Contract and its scope of services.

4. **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.

5. ADDITIONAL COMPENSATION

The Consultant shall submit a written proposal and secure the City Director of Procurement's written approval of same prior to the performance by the Consultant of any work for which additional compensation will be requested.

Without the City Director of Procurement's prior written approval of the proposed work and the fee therefore, the City will not consider payment of any sums other than those already set forth under this Contract.

6. EXCLUSIVE POSSESSION: All work of authorship, including but not limited to calculations, designs, drawings, specifications, graphics, text, and all copyrightable works resulting from this Contract shall become property of the City. Additionally, all services, information, computer program elements, reports, plans, specifications, and other deliverables which may be created under this Contract are the sole property of the City of Tucson. Property of the City shall not be used or released by the Consultant or any other person except with prior written permission by the City.

7. DRAWING, STANDARD DETAILS, ETC.: City of Tucson drafting standards, standard details, specifications, and office procedures are to be used in the preparation of items required under this Contract unless directed otherwise by the City. The City will furnish the Consultant with copies of the necessary standard City documents. All final documents shall be prepared by such methods and of such quality of workmanship as will permit the making of satisfactory reproductions.

8. ADVICE AND CONSULTATION: The Consultant shall be available to the City for advice and consultation on the interpretation of the plans and specifications on questions which may arise during the course of this Contract.

9. PUBLIC HEARINGS: The Consultant shall upon request, attend any public hearing on matters related to the scope of professional services set forth in this Contract.

10. TIME RECORDS: The Consultant shall maintain complete, current and daily records covering all hours actually worked on this project by the various classes of workers. The City shall have the right to audit and/or examine such records at any time during the progress of this Contract and shall withhold payment if such documentation is found by the City to be incomplete or erroneous.

11. PROTEST PROCEDURE: Should a firm believe that the City has not properly followed the selection procedures, the firm may file a protest in accordance with Article IX of the Tucson Procurement Code.

A protest shall be in writing and shall be filed with the Director of Procurement. A protest of a Request for Qualification and/or Request for Proposal shall be received at the Department of Procurement before the solicitation opening date. A protest of a proposed award or of an award shall be filed within ten days after the protestor knows or should have known the basis of the protest. A protest shall include:

- A. The name, address, and telephone number of the protestor;
- B. The signature of the protestor or its representative;
- C. Identification of the solicitation number;
- D. A detailed statement of the legal and factual grounds of protest including copies of relevant documents
- E. The form of relief requested.

12. CERTIFICATION: By signature in the offer section of the Offer page, Consultant certifies:

- A. The submission of the offer did not involve collusion or other anti-competitive practices.
- B. The Consultant shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.
- C. The Consultant has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.
- D. Consultant certifies by signing that if a design is required for this project, the design being furnished will contain no specifications for tropical hardwood excluded from consideration of purchase by the City of Tucson. A list of tropical hardwood may be obtained from the City's Department of Procurement. Consultants knowingly violating the tropical hardwood restriction may be barred from any further contracting with the City of Tucson.
- E. The Consultant submitting the offer hereby certifies that the individual signing the offer is an authorized agent for the Consultant and has the authority to bind the Consultant to the Contract.

13. TERMINATION OF CONTRACT:

- A. The City may terminate this Contract in whole or, from time to time, in part, for the City's convenience or because of the failure of the Consultant to fulfill the Contract obligations. Upon receipt of the notice of termination, the Consultant shall 1) immediately discontinue all services affected (unless the notice directs otherwise), and 2) deliver to the Department of Procurement all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.
- B. If the termination is for the convenience of the City, the City shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.
- C. If the termination is for failure of the Consultant to fulfill the contract obligations, the City may complete the work by contract or otherwise, and the Consultant shall be liable for any additional cost incurred by the City.
- D. If, after termination for failure to fulfill contract obligations, it is determined that the Consultant has not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.
- E. The rights and remedies of the City provided in this clause are in addition to any other rights or remedies provided by law or under this Contract.

14. 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.

15. 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.

- 16. INDEPENDENT CONSULTANT:** It is clearly 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 whatsoever.

Consultant shall not be entitled to compensation in the form of salaries, or to paid vacation or sick days by the City, and that such days do not accumulate for the use of same at a later date.

The City of Tucson will not provide any insurance coverage to Consultant, including Worker's Compensation coverage. The Consultant is advised that taxes or social security payments shall not be withheld from a City payment issued hereunder and that Consultant should make arrangements to directly pay such expenses, if any.

- 17. HUMAN RELATIONS:** Consultant agrees to abide by the provisions of the Tucson Code Chapter 28, Article XII, Section 28-138, Provision against discrimination required in all City contracts.

- 18. 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.

- 19. DUPLEXED/RECYCLED PAPER:** In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Consultant shall ensure that, whenever practicable, all printed materials produced by the Consultant in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.

- 20. 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.

- 21. AFFIRMATIVE ACTION:** Consultant agrees to abide by the provisions of the Tucson Code Chapter 28, Article XII Sections 28-137 to 28-144, Affirmative Action by City Consultants. Consultant, your subconsultant(s) and supplier(s) agree to adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, promote and upgrade the position of employees regardless of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, marital status and/or familial status, and who agree and are responsive to the City's goals.

Specifically, the Consultant agrees to submit the following reports to the City's Office of Equal Opportunity Programs before contract award:

- i. Part A. Employment Information Report
- ii. Part B. Equal Employment Opportunity/Affirmative Action Policy Plan;
- iii. Part C. Employer Equal Employment Opportunity (EEO) Workforce Profile

All such reports on file with the Equal Employment Opportunity Office will be updated at least annually. The Equal Employment Opportunity Office may for good cause recommend to the City's Director of Procurement that failure to comply with the requirements of this subsection be waived and that the submittal be accepted **contingent** upon receipt of the required reports before a notice to proceed is issued.

22. **AMERICANS WITH DISABILITIES ACT:** The Consultant shall comply with all applicable provisions of the Americans with Disabilities Act, Public Law 101-336, 42 U.S.C. 12101-12213, and applicable federal regulations under the Act.
23. **CONFIDENTIALITY OF RECORDS:** The Consultant 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. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
24. **GRATUITIES:** The City may, by written notice to the Consultant, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant, to any officer or employee of the City amending. In the event this Contract is canceled 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 Consultant the amount of the gratuity.
25. **APPLICABLE LAW:** This Contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract shall be brought only in Federal or State courts in the State of Arizona.
26. **CONTRACT:** The Final Contract document shall be written and shall be based upon the Request for Qualifications and/or the Request for Proposal issued by the City, the offer submitted by the Consultant in response to the Request for Qualifications and/or the Request for Proposal, and any negotiations entered into and changes agreed upon by both parties. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Qualifications and/or the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Consultant; 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 Consultant relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.
27. **LEGAL REMEDIES:** All claims and controversies shall be subject to the Tucson City Charter and Code.
28. **CONTRACT AMENDMENTS:** This Contract shall be modified only by a written contract amendment signed by the City's Director of Procurement and persons duly authorized to enter into contracts on behalf of the Consultant.
29. **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 forthwith be physically amended to make such insertion or correction.
30. **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 invalid provision or application.
31. **INTERPRETATION - PAROL EVIDENCE:** This Contract is intended by the parties as 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 this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
32. **ASSIGNMENT – DELEGATION:** No right or interest in this Contract shall be assignable in whole or in part without the written consent of the parties hereto, and no delegation of any duty of Consultant shall be made without prior written permission of the City's Procurement Director. This Contract and all of the terms, conditions and provisions herein, shall extend to and be binding upon the heirs, administrators, executors, successors, and assigns of the parties hereto. The City

shall not unreasonably withhold approval of assignment/delegation and shall notify the Consultant of the City's position within 15 days of receipt of written notice by the Consultant.

33. **SUBCONTRACTS:** No subcontract shall be entered into by the Consultant with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Procurement Director. 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 sub-consultant were the Consultant referred to herein. The Consultant is responsible for contract performance whether or not sub-consultants are used. The City shall not unreasonably withhold approval and shall notify the Consultant of the City's position within 15 days of receipt of written notice by the Consultant.
34. **RIGHTS AND REMEDIES:** No provision in this document or in the Consultant's response 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 or default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.
35. **ACKNOWLEDGMENTS:** Consultant acknowledges 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 Consultant or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.
36. **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, 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, 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.
37. **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 Consultant hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.
38. **RIGHT TO ASSURANCE:** Whenever one party to this Contract in good faith has reason to question 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 an anticipatory repudiation with this Contract.
39. **ADVERTISING:** Consultant shall not advertise or publish information concerning this Contract without prior written consent of the City.
40. **RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of a Consultant or sub-consultant which is related to the performance of any contract as awarded or to be awarded.
41. **WORK SCHEDULE:** The consultant shall adhere to any and all work schedules developed under this contract. The work schedule will provide for the completion of services within a specified number of consecutive calendar days following the starting date established by a written notice to proceed. If the Consultant is unable to adhere to the accepted schedule, they shall prepare a justification letter with a proposed revised schedule and submit the same to the City for review and approval. It shall be the sole option of the City to approve any such requests. The City shall be furnished two (2) copies of the original work schedule and two (2) copies after each revision, if any, is approved.

42. FORCE MAJEURE:

- A. 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 a major 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 sub-consultant unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.
- B. If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall immediately notify the other party in writing of such delay 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.

43. INSPECTION: 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 Consultant's risk and may be returned to the Consultant. If so returned, all costs are the responsibility of the Consultant. Noncompliance shall conform to the cancellation clause set forth in this document.

44. PAYMENT: 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.

45. BUSINESS LICENSES AND PERMITS: Consultant shall maintain in current status all Federal, State, and local registrations, licenses and permits required for the operation of the business conducted by the Consultant as applicable to this Contract. Prior to the award of a Contract, the successful offeror must obtain a City of Tucson Business License or a written determination that a business license is not required issued by the City's Business License Section. The business license must remain valid throughout the life of this contract. Contractor must provide a valid copy of the business license or a written determination that a business license is not required prior to award and, if applicable, at contract renewal. Application for a City Business License can be completed at <http://www.tucsonaz.gov/etax>. For questions contact the City's Business License Section at (520) 791-4566 or email at tax-license@tucsonaz.gov.

46. PROJECT LICENSES AND PERMITS: Consultant shall ensure that all licenses and permits, applicable to the work as specified herein, are maintained and current. Some examples of permits that may apply are:

- A. Army Corp of Engineers 404 Permit
- B. ADOT Permits
- C. Southern Pacific Railroad permits
- D. Arizona Department of Water Resources dewatering permit
- E. City of Tucson permits
- F. Federal, State and City authorizations
- G. ADEQ Permits
- H. Agricultural and Horticultural permits
- I. FAA permits

47. COST OF PROPOSAL PREPARATION: The City shall not reimburse the cost of developing, presenting, or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically providing adequate information in a straightforward and concise manner.

48. PUBLIC RECORD: All proposals submitted in response to this request shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification.

49. SUBSEQUENT EMPLOYMENT: The City may cancel 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 Consultant to any other party to this Contract with respect to the subject matter of the Contract. Such cancellation shall be effective when written notice from the Director of Procurement is received by the parties to this Contract, unless the notice specifies a later time.

50. PROJECT COMPLIANCE: At a minimum, the project shall be designed to comply with all applicable Federal, State and Local regulations and any amendments thereto which are adopted during the life of this Contract. Therefore, the Consultant should be aware that any of the following may apply to this project. Compliance with these is required and it shall be the responsibility of the Consultant to alert the City of any deviation from this requirement. (Note: It is the Consultant's sole responsibility to ensure that they comply with all applicable Federal, State and Local regulations. The inclusion of this list is for informational purposes only and is not intended to be all inclusive).

FEDERAL:

1. The Hazard Communication Act, CFR 1910-1200- handling hazardous materials
2. Resource Conservation and Recovery Act, 42 USC 6901 et. Seq.- Hazardous waste disposal
3. 36 CFR 800 – Protection of Historical and Cultural Properties
4. National Historic Preservation Act of 1966
5. 23 CFR 771 – Environmental Impact and Related Procedures
6. Americans with Disabilities Act (ADA), PL 101-336
7. Section 4(f) of the Department of Transportation Act
8. Executive Order 11988 (Floodplain Management)
9. FHPM 7-7-3 - Procedures for Abatement of Highway Traffic Noise and Construction Noise
10. FHPM 7-7-9 – Air Quality Guidelines
11. National Environmental Policy Act of 1969, 1973 and supplements
12. Executive Order 11990 (Protection of Wetlands)
13. Wild and Scenic Rivers Act of 1968
14. Section 404 of the Clean Water Act of 1977
15. Federal Farmlands Act of 1981
16. FHWA Technical Advisory T6640.8m, “Guidance Material for the Preparation of Environmental Documents”
17. Section 1424 (e) of the Safe Drinking Water Act (Sole Source Aquifer Review).
18. 36 CFR 60 – Determinations of Eligibility for Inclusion in the National Register of Historic Places
19. Public Law – 91-646 – Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
20. Wilderness Act of 1964, Public Law 88-577
21. Arizona Desert Wilderness Act of 1990, Public Law 101-628
22. Resource Conservation and Recovery Act (RCRA)
23. Comprehensive Environmental Response, Compensation and Recovery Act of 1980 (CERCLA)
24. Superfund Amendments and Reauthorization Act (SARA)
25. United States Forest Service, Integrated Resource Management (3rd Edition), August 1990
26. Endangered Species Act
27. Other Authorities: OSHA, Occupational Safety & Health Administration
28. Other governmental authorities having jurisdiction over the design or implementation of the Project.

STATE:

1. Arizona Revised Statutes (ARS) Title 34 Section 34-104 - Use of proprietary specifications
2. ARS Title 41 Section 41-844 - Findings of subsurface archaeological remains
3. ARS Title 34 Section 34-401 - Designing for the physically disabled
4. Arizona Native Plant Law
5. Arizona Historic Preservation Law
6. State Water Quality Law
7. ADOT Action Plan
8. ADOT Highways Division Policy and Implementation Memorandum 89-05, “Preservation of Arizona’s Wetlands,” August 1, 1989
9. Noise Abatement Policy for State Funded Projects

10. Arizona Environmental Quality Act (EQA)
11. Hazardous Waste Management Act (HWMA)
12. Underground Storage Tank Act of 1986

LOCAL:

1. The Building Code of the City of Tucson
2. Drainage Report and/or Grading Permit
3. Industrial Wastewater Discharge Permit
4. Native Plant Preservation Ordinance
5. Local codes and ordinances relating to air quality, noise, dust abatement, light, etc.

51. CONTINUITY: 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.

52. E-VERIFY: 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.

53. CERTIFICATION OF COMPLIANCE WITH A.R.S. SEC. 35-397: By signing this contract, the Contractor certifies that it does not have scrutinized business operations in Iran as required by A.R.S. sec. 35-397. If the City determines that the Contractor has submitted a false certification, the City may impose remedies as provided in the Tucson Procurement Code up to and including termination of this contract.

54. 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.

OFFER

TO THE CITY OF TUCSON:

The Undersigned hereby offers and agrees to enter into negotiations with the City to provide the material or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the solicitation.

For clarification of this offer, contact:

Name: _____

Phone: _____

Fax: _____

E-mail: _____

Company Name

Address

City State Zip

Signature of Person Authorized to Sign

Printed Name

Title

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

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 non-construction activities)
- Clean Air Requirements
- Clean Water Requirements
- Requirements for Recycled Products

Non Construction Activities

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

Miscellaneous Special Requirements

- Environmental Protection
- Energy Conservation Requirements
- Metric System Requirements

Certifications

- Debarment and Suspension
- Buy America Certification
- Lobbying Certification

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 (2) dated October, 1995) between Purchaser 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 4220.1E

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 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 the Special 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 Part 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.

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 noncompliant 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 4220.1E

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 4220.1E, 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 4220.1E

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 therefore 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 therefore.

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.

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.

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.

Year 2000 Compliance

Year 2000 Compliance - In addition to the warranties specified in this agreement, the contractor warrants that any equipment, internal or external component, device, or software Product(s) supplied under this agreement that process any date-time data will continue to accurately process the date-time data from, into, and between the years 1999 and 2000 and beyond, including leap year calculations. Where this agreement requires that other products purchased under this agreement must perform as a package or system, the product(s) will be Year 2000 Compliant as a system. In the event of any breach of this warranty, the Contractor shall restore the Product(s) to the same level of performance as stated herein, or repair or replace the Product(s) with conforming Product(s) so as to minimize interruption to the Authority's ongoing business process, time being of the essence, at Contractor's sole cost and expense. The Contractor shall not be responsible to correct errors in the Authority's data entry or data conversions.

For "Third Party Product(s)" [Product(s) manufactured or developed by a corporate entity independent from Contractor and provided by Contractor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer], the Contractor has obtained a warranty of Year 2000 Compliance from the Third Party Manufacturer and shall pass through said Third Party Manufacturer's warranty of Year 2000 Compliance to the Authority.

Certifications

**CERTIFICATION OF CONTRACTOR/PRIMARY PARTICIPANT REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

(To be submitted with each bid or offer exceeding \$25,000)

The Contractor/Primary Participant _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public function (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, state, or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this proposal.

Contractor (Name) _____ certifies or affirms the truthfulness and accuracy of the contents of the statement submitted on or with this certification and understands that the provisions of 31 U.S.C. §§ 3801 ET Seq. are applicable thereto.

DATE: _____

AUTHORIZED OFFICIAL:

SIGNATURE:

**CERTIFICATION OF LOWER-TIER CONTRACTORS/PARTICIPANTS REGARDING
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION
(To be submitted with each bid or offer exceeding \$25,000)**

The Lower Tier Contractor/Participant (potential sub-grantee or sub-recipient under an FTA project, potential third-party contractor, or potential subcontractor under a major third-party contract), _____, certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or involuntarily excluded from participation in this transaction by any Federal Department or agency.

Where the Lower Tier Contractor/Participant (potential sub-grantee or sub-recipient under an FTA project, potential third-party contractor, or potential subcontractor under a major third-party contract), is unable to certify to any of the statements in this certification, such Participant shall attach an explanation to this proposal.

THE LOWER TIER PARTICIPANT (POTENTIAL SUB-GRANTEE OR SUB-RECIPIENT UNDER AN FTA PROJECT, POTENTIAL THIRD-PARTY CONTRACTOR, OR POTENTIAL SUBCONTRACTOR UNDER A MAJOR THIRD-PARTY CONTRACT) _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENT SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C., § 3801 ET SEQ. ARE APPLICABLE THERETO.

DATE: _____

AUTHORIZED OFFICIAL:

SIGNATURE:

BUY AMERICA CERTIFICATION
CERTIFICATION FOR PROCUREMENT OF STEEL OR MANUFACTURED PRODUCTS
(To be submitted with each bid or offer exceeding \$100,000)

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 _____

Signature _____

Company Name _____

Title _____

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 _____

BUY AMERICA CERTIFICATION
CERTIFICATION FOR PROCUREMENT OF STEEL OR MANUFACTURED PRODUCTS
Certification requirement for procurement of buses, other rolling stock and associated equipment.
(To be submitted with each bid or offer exceeding \$100,000)

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but 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)

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, _____, 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

_____ Name and Title of Contractor's Authorized Official

_____ 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 4220.1E, available from the Contract Officer. Specifically, protestors shall file a protest with FTA Region 9 or FTA Headquarters Office no later than five (5) calendar 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.