CITY OF TUCSON
NOTICE OF REQUEST FOR QUALIFICATIONS NO. 141065
ON CALL ARCHITECT 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 SEVEN (7) CONSULTANTS to provide professional on call architect services for miscellaneous projects. Individual projects not to exceed $250,000.00. Federal Transit Administration (FTA), Regional Transportation Authority (RTA) and Housing and Urban Development (HUD) funding may be utilized on selected projects. The FTA and HUD terms and conditions attached to this RFQ will be incorporated into any resulting contract and will apply to projects using those funds.

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

A copy of this solicitation and possible future amendments may be obtained from our Internet site at: http://www.tucsonprocurement.com/ by selecting the Bid Opportunities link and the associated solicitation number. The City does not mail out Notices of available solicitations via the U.S. Postal Service. Email notifications are sent to those interested offerors who are registered with us and who have selected email as their preferred delivery method. To register, please visit www.tucsonprocurement.com click on Vendors, then click on Vendor Registration. You may also call (520) 791-4217 if you have questions.

Statements of Qualifications (SOQ’s) for the specified material or service shall be received by the Department of Procurement, 255 W. Alameda, 6th Floor, Tucson, Arizona 85701, until the date and time cited.

SOQ’s must be in the actual possession of the Department of Procurement at the location indicated, on or prior to the exact date and time indicated above. Late submittals shall not be considered. The prevailing clock shall be the City Department of Procurement clock.

Submittals must be submitted in a sealed envelope. The Request for Qualifications number and the offeror’s name and address should be clearly indicated on the outside of the envelope. All submittals must be completed in ink or typewritten. Questions must be addressed to the Contract Officer listed above.

****ALERT****
The City of Tucson has implemented additional security procedures in City Hall. Effective June 3, 2013, all visitors will be required to enter only through the north side doors facing Alameda Street. When attending a meeting or delivering a solicitation response to City Hall, please allow ample time to go through the security screening process.

Visitors will be required to do the following:
- Pass through metal detectors / security wands;
- Purses and bags will be searched by security personnel;
- Obtain a visitor’s pass.

SUBMITTAL DUE DATE: Monday, November 10, 2014 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: Thursday, October 30, 2014
TIME: 9:00 A.M., LOCAL AZ TIME
LOCATION: City Hall, 1st Floor East Conference Room, 255 W. Alameda, Tucson, AZ 85701

QUESTIONS SHALL BE DIRECTED TO: Dan Longanecker, CPPB, Principal Contract Officer
520.837.4125 Dan.Longanecker@tucsonaz.gov.

Publish Dates: Friday, October 17, 2014 & Friday, October 24, 2014
SCOPE OF SERVICES

I. INTRODUCTION AND DESCRIPTION OF SCOPE OF SERVICES

The City of Tucson wishes to award up to seven (7) contracts to provide on-call architectural services on an “as-needed” basis. This is to establish nonexclusive “services-on-demand” retainer type professional service contracts. The contracts will be based on a negotiated hourly billing rate. A scope of work and a total not-to-exceed fee amount will be negotiated as each project arises. These contracts will reduce the administrative burden associated with multiple short form professional service contracts, provide adjunct consultant services to accelerate the design process, and furnish auxiliary construction administration for small projects.

PROJECT: Professional Architectural Services for Miscellaneous Projects

LOCATION: Various

FEE BASIS: Negotiated Hourly Billing Rates

AMOUNT OF CONTRACT: Not to exceed two hundred fifty thousand ($250,000.00) per project. Typical projects are $10,000-$50,000.

PAYMENT FOR SERVICES: Pay requests may be submitted monthly and will be certified for payment for services performed and approved by the Project Manager, consistent with City procedures. Each project will have its own invoice.

ARTICLE 1: THE PROJECT

1.1 Design Criteria:

1.1.1 Preliminary design program requirements for each increment of service (project) are compiled from information provided by the User Department(s). The Project requirements are not all inclusive and are only presented in an effort to relate the general Project and the scope of the design problem. The Consultant shall use this data as a basis to establish the detailed space requirements and functional relationships required for development of a definitive Architectural Design Program and Long-Range Site Development Plan, if required.

1.1.2 The basic Project requirements that determine the design of the facilities shall be a product of the Consultant’s detailed analysis and research of the needs and requirements of the facility with direction provided by the General Services Department A/E Division and the User Department(s).

1.2 Goals and Objectives:

1.2.1 If required, preparation of a community supported Architectural Design Program for development of the Project, and areas directly adjacent to these facilities that take into consideration any future development component selected by the City.

1.2.2 Evaluating the proposed facilities for compliance with the Americans With Disabilities Accessibility Guidelines (ADAG) and providing good traffic flow for ease of circulation, mobility, and accessibility in and around the site.
1.2.3 Improving and expanding the services of the User Department(s) and making new facilities functional for the staff and inviting to the public.

1.2.4 Preparation of construction documents which satisfy the functional requirements as described by the General Services Department A/E Project Manager and the User Department(s) and as established in the approved Architectural Program Statement and Long-Range Site Development Plan (if required) as attainable within the budgeted funds.

1.3 Architectural Character:

1.3.1 Facilities designed under this Contract must be as barrier free, as safe, and accessible to the staff as possible and be expressive of the functional activities taking place within and around the facility. The resulting design should reflect a character corresponding to the spirit of the facility while being responsive to the project budget and environmental considerations. The Consultant is to provide innovative guidance in the design approach with the selection of materials, orientation, and structural systems that respond to today's need for the conservation of energy and water while being responsive to the project budget.

1.3.2 Careful consideration should be given to service circulation as well as security of and around City facilities in the Project design. Vehicular traffic and parking requirements are to be analyzed with the design solution reflecting the results of this analysis without sacrificing the architectural character of the proposed facilities.

1.3.3 City facilities should reflect the commitment to public service through the provision of a functional, flexible facility that is operationally cost effective in terms that minimize staffing requirements and maximize energy conservation.

1.4 General Requirements:

1.4.1 Mechanical Equipment: The Consultant shall design spaces large enough to accommodate the required mechanical equipment with ample room for performance of maintenance and service functions and in compliance with all applicable codes. Requirements include, but are not limited to, the following:

.1 All conditioned spaces shall have forced air heating and refrigerated cooling.
.2 All lavatories, sinks, and showers shall have both hot and cold water, with provisions that meet or exceed ADA requirements.
.3 Locate drinking fountains which meet or exceed ADA requirements.
.4 Provide adequate filter storage room.

1.4.2 Communications and Electrical Equipment: The Consultant shall design spaces large enough to accommodate the following:

.1 A computer system which interfaces with the City's central system,
.2 Electrical equipment with ample room for the performance of maintenance functions, and
.3 Communications equipment, such as telephone, alarm, etc.

1.4.3 Public Participation: Public participation is an important aspect of Projects. Consultant shall participate with the City for any required public meetings.
1.4.4 **Trees for Tucson:** Tree plantings should be responsive to the “Trees for Tucson” program endorsed by the City’s Mayor and Council.

1.4.5 **Landscaping:** Shade is important for outdoor public areas and parking. Required landscaping should be integrated to meet zoning requirements and be designed to enhance the new facility.

1.4.6 **Parking/Service:** Analysis of parking lot circulation, surfacing, striping, lighting, landscaping and the entry and exiting process will be based upon the accessing and the servicing of the new facility. Areas of primary importance are:

1.4.6.1 Parking spaces and loading space(s) as required by code with required landscape buffering to accommodate the facility’s multiple uses as well as the physically disabled;

1.4.6.2 Drop-off area at facility entrance;

1.4.6.3 Refuse dumpster area with visual screening;

1.4.6.4 Bicycle racks/lockers;

1.4.6.5 Covered walkways;

1.4.6.6 Grounds maintenance facility.

1.5 **Special Considerations:**

1.5.1 **Energy And Water Efficiency:**

1.5.1.1 The facilities designed under this Contract shall be designed for maximum efficiency in the use of both energy and water. Design must meet the requirements of the latest version of the Tucson/Pima Count Sustainable Energy Standard.

1.5.2 **Operation And Maintenance Costs:**

1.5.2.1 Provide HVAC, lighting and electric load calculations, and develop estimates of the cost of operating and maintaining the facilities designed under this Contract. The estimated operation and maintenance costs are to be projected for each of the five (5) consecutive fiscal years following acceptance of the facilities by the City.

1.5.3 **Americans with Disabilities Act (ADA):**

1.5.3.1 City facilities, as public buildings, shall be designed, constructed, and altered for accessibility and use by the Disabled. In this connection, with the ADA, the Department of Justice 2010 ADA Standards for Accessible Design, (ADAAG) for Title II entities shall determine the criteria to be used for the design of these facilities to ensure accessibility and compliance.

The specific design criteria applicable to provisions for the disabled shall be incorporated in the Architectural Design Program document for the facility.

The DOJ standards stipulate minimums and maximums as guidelines. The City of Tucson uses these guidelines as the minimum or maximum allowable standards within which universal access is provided.

1.6 Site Requirements:

1.6.1 If required, the Consultant shall conduct a complete site analysis to clearly identify problems and opportunities connected with the development of the site. Included in this analysis are all existing facilities, zoning, and other legal requirements. The functional and visual relationship between all site components, both the existing and the proposed facilities, will be studied, and design options on their total integration will be presented for approval and development as part of this project. Alterations to the site circulation, paving and landscaping to accommodate the new facility as well as the physically disabled is of primary importance.

1.7 Project Budget:

1.7.1 The Architectural Program Statement (if required) prepared by the Consultant will provide an estimate of all probable costs for the development of a suitable new facility and related improvements. Construction documents will be prepared for those facilities and improvements that can be completed for the amount budgeted.

1.7.2 The final project budget will be established as a result of the cost analysis provided by the Consultant and reviewed and approved by the User Department(s). The budget is to provide for the construction of the facilities and site improvements that are determined as the highest priority by the User Department(s).

1.7.3 All parties understand that the City of Tucson, as a public entity, has limited funds for each project. Therefore, City facilities are to be designed so that the completed facilities represent quality consistent with wise budget management.

ARTICLE 2: SCOPE OF PROFESSIONAL SERVICES

2.1 General Description:

2.1.1 The basic services anticipated under this Contract are primarily modifications and renovations common to building construction projects. The typical types of projects and services anticipated are:

.1 Building construction
.2 Building modifications and remodels
.3 Building additions
.4 In-house building and facility design
.5 Miscellaneous studies and estimates
.6 Inspections for owner acceptance of construction
.7 Damage assessments
.8 Construction cost estimating
.9 Shop drawing review
.10 Review and critique of designs and construction documents for major building projects
.11 Preventive maintenance recommendations
.12 Special systems design, including the services provided by a Registered Communications Distribution Designer (RCDD)
.13 Inspections for structural integrity.

2.1.2 The specific services being furnished during the life of this Contract shall be rendered by Architects and/or Engineers registered to practice in their particular field of endeavor within the State of Arizona. The professional and associated services provided shall be rendered by personnel pre-approved by the City, which reserves pre-approval rights for any personnel substitutes, and shall be rendered promptly and diligently upon receipt of written Notice to Proceed with any or all of the services herein.

2.1.3 Consultant shall be responsible for the completeness and accuracy of all services rendered under this Contract and correct all errors of omission or commission on the drawings, specifications and other documents notwithstanding prior acceptance by the City.

2.1.4 Consultant shall be available to accept new jobs for the City on an as-needed basis and be able to meet strict deadlines for the completion of those jobs. Unavailability to assume specific jobs, or inability to meet the City’s schedule as required, may result in termination by the City.

2.1.5 Consultant understands and accepts that this is neither an exclusive Contract nor a commitment that services will be required by the City. The City reserves the right to contract with other consultants and to request service assignments where the City solely determines the situation justifies other Contracts and service assignment.

2.1.6 Record Drawings: Consultant shall furnish General Services Department A/E Division one (1) set of mylar transparent copies of the final detailed working drawings which reflect “as-built” conditions within thirty days of the Consultant’s receipt of the as-built drawings from the Contractor. Record drawings shall be prepared and provided to the City in conformance with Operations A/E CAD Standards. Refer to General Services Department A/E CAD Standards for description of drawing standards and deliverables.

2.1.7 Submittal Requirements: All submittals made under this contract shall be in accordance with the latest version of the General Services Department A/E Division Design and CAD Standards. The Consultant shall develop a Submittal Log and include the Log in the Specifications.

2.2 Requirements for each Increment of Service (Project):

2.2.1 Consultant shall prepare a not-to-exceed fee proposal for the accomplishment of each Project based on the contract billing rates. Your service proposal shall be approved by the Project Manager prior to Your proceeding with that particular service. Your work proposal shall provide for the completion of Your service within a specific number of calendar days, if authorized to proceed.

2.2.2 The Project Manager shall review the proposal, and if complete and acceptable, issue a written Notice to Proceed. The proposal shall become a part of this contract and all services provided under the proposal shall be done in accordance with the covenants and conditions of this Contract.

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1 Operations A/E CAD Standards will be provided at the time of fee negotiation
2 Operations A/E Design Standards will be provided at the time of fee negotiation
The approved proposal fee amount for the services required shall be a not-to-exceed amount. Upon receipt of the Notice to Proceed, You shall provide the specified services in a prompt and diligent manner.

2.2.3 Your proposal shall include all services for design and construction administration, if applicable, and shall include all additional services and reimbursable expenses. Any fee amount over and above that on your proposal and the subsequent written Notice to Proceed requires issuance of an additional written Notice to Proceed. The City is not responsible for any Consultant fees over and above the amount on the written Notice(s) to Proceed for each individual Project.

2.2.4 Confirmation of the Project Requirements shall be accomplished by the Consultant arranging through the Project Manager Pre-Design conferences with interested parties to confirm the requirements of the Project. The Project Management Team concerned with the development of the Project may include, but is not limited to, the following:

1. User Department Project Manager
2. User Department Director or designated alternate
3. Operations A/E Division Project Manager
4. Technical Planning and Resources Energy Management
5. User Department Design Team
6. Office of Environmental Management
7. Development Services
8. Procurement

2.3 Work Schedule:

2.3.1 Refer to General Services Department A/E Division Design Standards.

2.3.2 Consultant shall prepare a work schedule within ten (10) calendar days of the Notice-To-Proceed in a format that shall present information in monthly increments as required for the accomplishment of the various tasks involved in providing professional services under this Contract and will include at a minimum:

1. The events which will satisfy each of the professional services.
2. The dates each event will start and be completed.
3. The dates of each public meeting and design review meetings.
4. The elements that will hinder normal progress.
5. The names of persons responsible for each event.

2.4 Architectural Design Program (if required):

2.4.1 Refer to General Services Department A/E Design Standards.

2.4.2 The Consultant shall prepare a formal comprehensive Architectural Design Program for the proposed facilities, clearly stating services, circulation and functional relationships in and adjacent to the facility; delineating size and types of the components; alternative approaches to the possible growth and change for the various functions; developing probable construction costs and Project budget recommendations; documenting interviews with designated City personnel and other interested parties; and providing necessary detailed data to enable Design to be undertaken upon
completion of the document. This Program will be planned in conjunction with designated personnel.

2.4.3 Site Analysis: The Consultant will develop a complete site analysis based on the Architectural Design Program to include evaluation of the existing site elements, traffic and parking considerations, topography analysis, environmental contamination survey, archeological survey, drainage analysis, geotechnical investigation, zoning, utility easements and other legal restrictions, and future site enhancements.

2.4.4 Consultant shall prepare a preliminary estimate of the Cost of the Work, updated and refined as the design process progresses, and evaluated against the project budget in order to keep costs within budget while accommodating project needs.

2.4.5 The Architectural Design Program is to be submitted for analysis, review, comment, and approval prior to proceeding with Basic Design Services for design of the facilities.

2.4.6 The Architectural Design Program, in general terms, shall include the following:

.1 Establish the project GOALS - a documentation of what the City wants to do and why it wants to do it.

.2 Collect, organize and analyze the FACTS - organize and analyze the program facts to reveal their relative importance and meaning.

.3 Uncover and test program CONCEPTS - test programmatic concepts related to ideas intended mainly as functional solutions to the design and operational problems of the Project.

.4 Determine Facility and Staff NEEDS - space requirements, quality of construction and money.

.5 State the design PROBLEM - after evaluating all the information derived from the above, develop the most important statements that can be made regarding the problem.

2.4.7 The Architectural Design Program is viewed by the City staff as a formal document to be used as the basis for making decisions concerning the Project and should be designed for ease of communication. The final program document will be arranged in a format established in consultation with the General Services Department A/E Project Manager.

2.4.8 Long-Range Site Development Plan:

2.4.8.1 Special Consideration -- In the site analysis and development plan formulation, the Consultant shall give special consideration to the impact of the facilities and related improvements upon the surrounding neighbors. Such considerations shall include, but not be limited to, architectural compatibility, traffic patterns, noise and light levels, visual impact, and other concerns.

2.4.8.2 Site Analysis -- The consultant shall develop a complete site analysis to include evaluation of the existing site elements; traffic and parking considerations; topography analysis based on available information; zoning and other legal restrictions; overall site analysis; and future site enhancements.
2.4.8.3 Development Plan -- The Consultant shall also compile, analyze and refine information derived from the interviews with the Using Agency and other interested parties and a survey consisting of research and investigation of existing site as well as other similar facilities for incorporation in the design program. The Consultant shall develop from this information a definitive site development program for the building site and related improvements that is compatible with the long-range plans and goals established by the Using Agency. The site development plan shall be arranged in a format agreed to with the Project Manager.

2.4.8.4 Deliverables -- The product of the services to be provided under this heading shall include the Consultant's recommendations as to the most functional and feasible Long-Range Development Plan; along with drawings and supporting documents as required to graphically illustrate the uses of the site for future expansion of activities to be administered by the Using Agency. An implementation schedule and a statement of probable costs of the development is to be included as a part of the Long-Range Development Plan documentation.

2.5 Schedule I - Basic Design Services

2.5.1 Refer to General Services Department A/E Design Standards.

2.5.2 Confirmation of Project Requirements: Continuation with this phase of the Professional Services Contract will be contingent on the satisfactory completion of the Architectural Design Program and authorization to proceed with the design of the facilities as defined in the approved Architectural Design Program.

2.5.3 Schematic Design: Essentials of the approved Project requirements document (Architectural Design Program Document) shall be carefully analyzed and be in compliance with regulations and codes studied by the Consultant. Consultant shall prepare and present such schematic design drawings together with general description of the Project, including a summary of circulation including public and City staff on and adjacent to the site, a consideration of all pending and long-range plans, available energy efficiency measures and proposed construction materials, as may be necessary to illustrate possible design solutions to the Project Manager who will arrange for reviews, conferences, and acceptance.

2.5.3.1 The Schematic Design submittal shall indicate the area(s) in which construction is proposed, along with the requirements for soils investigations prepared by the structural engineer for the Design Development phase. Consultant shall submit an opinion of probable construction costs based on current unit costs for similar construction.

2.5.4 Design Development: The Design Development phase will proceed after written acceptance by the General Services Department A/E Project Manager of the Schematic Design. Consultant will proceed with the Design Development, and prepare plans, elevations, sections and other drawings as required to firmly fix the Project in all its architectural, structural, civil, mechanical, electrical, graphics, landscape and other technical design essentials. Consultant will prepare a site plan indicating general locations and nature of all site improvements, provide an outline specification to establish the basic materials of construction, prepare a summary of the design features including energy measures incorporated in the design and an itemized construction cost estimate to enable the Project Manager to appraise the economic value of the Project design to the City. Consultant shall submit these items in one package to the Project Manager for review and acceptance.
2.5.5 Construction Documents: The Construction Documents phase will proceed after written acceptance of the Design Development package by the General Services Department A/E Project Manager. Consultant will proceed with the Construction documents as follows:

2.5.5.1 Prepare working drawings and specifications for the construction of the facilities described in the accepted Design Development documents. Consultant shall leave room on all drawings in the bottom right-hand part of each sheet for plan approval stamps.

2.5.5.2 Submit these drawings to the Project Manager for review, comment and acceptance at 50% and 95% completion.

2.5.5.3 Complete detailed working drawings and specifications. All final documents shall be prepared by such methods and be of such quality of workmanship as will permit the making of satisfactory reproductions for efficient execution of the construction work and for record purposes.

2.5.5.4 Stipulate the number and types of material and/or equipment tests as formally approved by the Project Manager.

2.5.5.5 Complete a Code Review Analysis, Building Permit Application and Plan Review Record for submission to the City of Tucson Development Services Department, and obtain approvals and permits from all governmental authorities having jurisdiction over the project upon acceptance of the final plans, specifications and supporting documents by the Project Manager. Consultant is obligated to closely monitor and follow-up on the Building Permit application (plans, specifications, and supporting documents) as required to ensure the application does not expire by limitation (UBC Sec. 304 (c)). Consultant shall request an extension of the time for action on the application, if necessary, to comply with the expiration of plan review limitation. Consultant will be responsible for making modifications to the plans, specifications and supporting documents as required to obtain all required building permits.

2.5.6 Evaluation of Budget and Cost of the Work:

2.5.6.1 When the Project requirements have been sufficiently identified, the Consultant shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. As the design process progresses through the end of the preparation of the Construction Documents, the Consultant shall update and refine the preliminary estimate of the Cost of the Work. The Consultant shall advise the Operations A/E Project Manager of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the Consultant’s estimate of the Cost of the Work exceeds the Project budget, the Consultant shall make appropriate recommendations to the Project Manager to adjust the Project’s size, quality or budget, and the Project Manager and the Using Department shall cooperate with the Consultant in making such adjustments.

2.5.6.2 Evaluations of the Project budget, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Consultant represent the Consultant’s judgment
as a design professional familiar with the construction industry. It is recognized, however, that the Consultant, the Project Manager and/or the Using Department have no control over the cost of labor, materials or equipment, over the Contractor’s methods of determining bid prices, or over competitive bidding, market or negotiating conditions.

2.5.6.3 In preparing estimates of the Cost of the Work, the Consultant shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Project budget for the Cost of the Work. If an increase in the Contract Sum occurring after execution of the Contract between the City and the Contractor causes the budget for the Cost of the Work to be exceeded, that budget shall be increased accordingly.

2.5.6.4 If bidding or negotiation has not commenced within 90 days after the Consultant submits the Construction Documents to the General Services Department A/E Project Manager, the budget for the Cost of the Work may be adjusted to reflect changes in the general level of prices in the construction industry.

2.5.6.5 If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, the Project Manager and Using Department may:

.1 give written approval of an increase in the budget for the Cost of the Work; or
.2 authorize rebidding or renegotiating of the Project within a reasonable time; or
.3 terminate in accordance with contract provisions contained in Standard Terms and Conditions, Section 13; or
.4 cooperate in revising the Project scope and quality as required to reduce the Cost of the Work.

2.5.6.6 If the City chooses to proceed under Clause 2.4.6.5.4, the Consultant, without additional compensation, shall modify the documents for which the Consultant is responsible under the Contract as necessary to comply with the budget for the Cost of the Work.

2.5.7 The Consultant is required to include the design services for geotechnical engineering.

2.5.8 The Consultant is required to obtain written approval for all necessary permits for construction, including, but not limited to, the Federal Stormwater Quality National Pollutant Discharge Elimination System (NPDES), the Environmental Protection Agency (EPA), National Environmental Policy Act (NEPA), Arizona Department of Environmental Quality (ADEQ) (Aquifer Protection Permit), Pima County Department of Environmental Quality (PDEQ) (Air Quality Permit) and Pima County Waste Water Management (Industrial Wastewater Control Permit). Consultant shall prepare Stormwater Pollution Prevention Plans (SWPPP) for construction activities and on-going operational and maintenance activities. Design, construction and operation shall comply with the City’s Municipal Stormwater NPDES Permit as issued by the EPA.

2.6 Schedule II - Services during Bidding and Construction

2.6.1 Consultant agrees to render the following professional services promptly, diligently and in accordance with General Services Department A/E Design Standards upon receipt of written Notice to Proceed with the services in Schedule II herein:
2.6.2 Construction Contract Administration: The Construction Contract Administration phase will proceed after receipt of written acceptance by the General Services Department A/E Project Manager of the construction documents. Consultant shall provide administration of the construction contract between the owner and the contractor as set forth below and in the general conditions of the construction contract. Consultant shall:

2.6.2.1 Print and distribute contract documents to bidders, issue addenda following approval by General Services Department A/E Division, and review requests for approval of alternative products.

2.6.2.2 Assist in obtaining competitive bids and in the analysis and evaluation of the bids or proposals received for the award of a construction contract based upon the plans and specifications completed under this Contract.

2.6.2.3 Serve as the Construction Administrator providing day-to-day administration of the Construction Contract; act as the agent of the City to the extent provided in the Construction Contract documents, hereby incorporated by reference; and advise and consult with the General Services Department A/E Project Manager concerning the progress and quality of the work.

2.6.2.4 Consultant shall prepare minutes of all meetings attended and supply the Project Manager and Contractor with a typed copy within three working days. (Contractor shall also maintain and distribute minutes of all meetings.)

2.6.2.5 Consultant shall provide advice and consultation on the interpretation of the plans and specifications and in response to any questions which may arise before and during the course of construction and until 60 days after the Project receives final acceptance by the City.

2.6.2.6 Consultant shall review all shop drawings, working drawings, sketches, product details, samples, etc., submitted by Construction Contractor(s) or suppliers of material and equipment for conformance with Project design and compliance with the construction documents. Consultant shall maintain a record of, and copies of, submittals supplied by the contractor and will provide one copy to the Project Manager at completion of the Project.

2.6.2.7 Consultant shall prepare such supplemental drawings and Change Orders with supporting documentation and data as deemed necessary for the City’s approval and execution. Consultant shall not authorize the Construction Contractor(s) to proceed with any change in the Project without a written, fully executed Change Order. Consultant may authorize minor changes in the work which involve neither additional costs nor extensions of time and which are not inconsistent with the intent of the Construction Documents but are rather an interpretation, correction for field conditions, or clarifications.

2.6.2.8 Consultant shall be responsible for the completeness and accuracy of all services rendered under this Contract and correct all errors of omission or commission on the drawings, specifications and other documents notwithstanding prior acceptance by the City.

2.6.2.9 Consultant shall assist in preparation of completion reports including Certificate of Substantial Completion, punch list and record (as-built) drawings, administer all Requests for Information and preparation of Change Orders, Consent of Surety, and evaluate the Construction Contractor's payment requests.
2.6.2.10 Consultant shall coordinate owner training in equipment and facility operation.

2.7 Field Administration:

2.7.3 Field administration shall be furnished by the Consultant and Sub-Consultants for the construction of the Project, until sixty days after final acceptance by the City. Consultant shall make not less than weekly periodic visits to the site so as to be thoroughly familiar with the progress and with the quality of the Work and to determine whether, in Consultant’s opinion, all phases of the Work conform with the Construction Documents and the most recently revised and approved operational schedule. Sub-Consultants shall make periodic visits to the site to thoroughly familiarize themselves with the progress and with the quality of the Work and to determine whether, in their opinion, all phases of the Work conform with the Construction Documents and the most recently revised and approved operational schedule. On the basis of the Consultant’s on-site observations as an architect/engineer, Consultant shall immediately inform the City of defects and deficiencies observed in the executed work of the Construction Contractor.

2.7.3.2 Consultant shall make such on-site observations which are commensurate with the progress of the Project.

2.7.3.3 Consultant shall schedule and conduct weekly meetings to discuss construction progress and construction administration issues, verify work schedules and notify the Project Manager of any possible problems and/or conflicts. Consultant shall prepare and distribute meeting minutes and weekly progress reports in an approved form delineating the progress of the construction work, outlining any miscellaneous items and site issues that happened throughout the week, reporting the justifications for deviations from the current, approved operational schedules, if any, and the estimated progress during the next reporting period. Meeting minutes should also include weather conditions, subcontractors on site, and work being completed.

2.7.3.4 Consultant shall conduct any additional meetings and/or site visits as required to deal with critical issues throughout construction that may affect the project.

2.7.3.5 Consultant is required, on a weekly basis, to review the Contractor’s as-built set of drawings, verify they are current, report discrepancies to the City and help resolve any discrepancies.

2.7.3.6 Consultant shall maintain a diary recording observations of the activities related to the Project including weather conditions, nature and location of work being performed, equipment on site, trades on site, materials stored on site, problems encountered, work accomplished, and verbal instructions and interpretations given to the Construction Contractor. The diary shall be available for review by the Project Manager and will be provided to the Project Manager upon completion of construction. Consultant shall photograph any possible problems and/or conflicts and maintain an on-going, 3-ring binder of the photographs labeled with dates, who the problem/conflict was discussed with, and what the problem or issue is.

2.7.3.7 Consultant shall submit, when their phase of the Work is in progress, weekly progress reports for the civil, structural, mechanical, electrical, landscape, irrigation and other special phases of the construction signed by the professional(s) responsible for the design of these elements. Consultant shall furnish signed copies of each weekly and periodic progress report to the Project Manager promptly.
2.7.3.8 Consultant shall prepare and maintain a log and copy of all final, approved Submittals, Requests for Information, Change Orders, Proposal Requests and Supplemental Instructions, testing and inspections, and pay applications; and shall assemble (from the Contractor) maintenance agreements for the warranty period, review for completeness, and provide to the City. Consultant shall also provide to the City copies of all final, approved submittals.

2.7.4 Materials And Equipment Testing: General Services Department A/E Division will provide an independent testing agency to make investigations and tests which have been previously authorized by the Project Manager to safeguard compliance with the contract documents. Consultant shall prepare and maintain a project testing log and will immediately report by fax or email all non-conformities of materials, equipment and workmanship to the Project Manager, again within three (3) days after the observation and then after the correction is made. Consultant shall monitor the testing and initial operation of mechanical and electrical equipment, report marginal or doubtful areas of conformance with the contract documents, in writing, to the Project Manager and furnish all professional services in support of proper operation. Consultant shall also review, approve and forward to the City, all pay applications from the testing agency.

2.7.5 Payments For Construction: Consultant shall review requests by the Construction Contractor for partial and final payments for all phases of construction, issue certification for payment and maintain a record of Contractor payment applications.

2.7.6 Certificate Of Substantial Completion: Consultant shall prepare the Certificate of Substantial Completion, punch list report and a recommendation for acceptance of the Project.

2.7.7 Duration Of Construction Contract Administration Services: The Consultant shall provide basic Construction Contract Administration services until sixty days after final acceptance by the City. Consultant shall provide services as required to meet final Completion and shall coordinate permanent utility hook-up. Consultant shall conduct a warranty review of the project just prior to the end of the warranty period as provided in the construction contract.

2.8 Additional Services

2.8.1 Consultant may be requested to include the following services:

2.8.2 Furnishings: Refer to General Services Department A/E Design Standards.

2.8.3 Graphics: This service shall include the design, drawings, specifications, cost estimates and direction of the placement of the exterior graphics required for the Project. Graphics design shall cover exterior treatment as required to ensure the proper functioning of the facilities developed under this contract. Vandalism of the graphics employed on City projects has been a continuing problem. Special consideration in the design of the project graphics is to be directed toward signing that will discourage vandalism. All graphics shall comply with ADA requirements. These graphics shall include, but not be limited to:

.1 Monument signs at entrance to property
.2 Site directional signs
.3 Building identification signs
.4 Building address numbers
.5 Hazardous Material signs
.6 Building identification numbers
2.8.4 Hydrology Report: An allowance is made for the Consultant to obtain detailed engineering design services to include the preparation of definitive Site Drainage Analyses and Retention Reports with Civil Engineering Design in accordance with the requirements of the City of Tucson Floodplain Ordinance. This comprehensive hydrologic/hydraulic analysis and design shall address existing drainage conditions affecting the site in the 2, 10, and 100 year return events.

2.8.4.1 The findings and results of the hydrologic/hydraulic analysis and design shall be detailed in a comprehensive report for approval by the City Engineering Department. Resulting detailed design plans shall be included as part of this task and shall be coordinated with other project disciplines and functions. The detailed engineering design services shall provide for the design, construction documents, services during construction, and a warranty review as required for the site engineering portion of the project. In this connection the Consultant shall coordinate the services of others in their preparation of a detailed survey of existing Site conditions.

2.8.5 Storm Drainage System Design: The Consultant is to provide the detailed engineering design services for the integration of the Storm Drainage System into the existing system in accordance with the requirements of the City of Tucson Floodplain Ordinance, the National Pollutant Discharge Elimination System (NPDES) requirements, and Pima County Wastewater Management Standards.

2.8.5.1 The Consultant shall provide a site drainage and storm drain analysis for the selected facility improvements identified in the Architectural Design Program Document. The Storm Drainage System Analysis shall address measures to minimize pollutants in the stormwater runoff generated at the facility. These measures shall include, to the maximum extent practicable, practices typical of modern industry standards including: secondary containment of bulk liquids, directing flows away from material storage and waste disposal areas, spill control staging areas, and other practices designed to prevent stormwater pollution during facility operation. The findings and results of the Storm Drainage System analysis and design shall be detailed in a comprehensive report for approval by the City and the County coordinated with other project disciplines and functions.

2.8.5.2 Resulting detailed design plans shall be included as part of this task and shall be coordinated with other project disciplines and functions. The detailed engineering design services shall provide for the following:

.1 Design,
.2 Construction Documents including all plans and documents necessary to meet the requirements of the NPDES Stormwater Permit for Construction Sites that disturb more than 5 acres,
.3 Services During Construction,
.4 and a Warranty Review as required for the site engineering portion of the project.

In this connection the Consultant shall coordinate the services of others in their preparation of a detailed survey of existing Site conditions.

2.8.6 Development Plan, if required

2.8.7 Community Development Review Committee (CDRC) review, if required
2.8.8 Registered Communications Distribution Designer (RCDD): Design and locate the communications distribution to the building(s).

2.8.9 Quantity Take-Off Cost Estimates: Shall be prepared and provided to the City in conformance with Architecture & Engineering Division’s Building Design and Maintenance Standards.

2.8.10 Warranty Review: Conduct a warranty review of the project just prior to the expiration of the warranty period provided in the construction contract.

2.8.11 Public Art: The City may choose to include Public Art in the Project, and the Consultant will be asked to participate in the selection process.

2.9 Reimbursable Expenses

2.9.1 Aerial Topographic And Property Survey: An allowance is made for the Consultant to obtain all aerial and ground survey work necessary to establish horizontal and vertical controls including the existing utilities, existing construction, restrictions, easements and other rights affecting the property. The survey and mapping shall extend a sufficient distance beyond the Project boundaries for all design purposes. The survey shall include benchmark(s) on City datum in the vicinity of the proposed construction. The horizontal controls shall be tied to the City of Tucson monumentation system.

2.9.2 Presentation Media: The Consultant shall provide presentation media of the subject facilities to convey the proposed design for the Project. The presentation media shall be of a size and scale agreed to between the Consultant and the Project Manager, and the completed presentation media shall be subject to the approval of the Project Manager. The allowance for presentation media shall include funds for providing photographs of the final product.

2.9.3 Printing: An allowance will be provided for the reproduction of copies of the Architectural Design Program, Schematic Documents, and Design Documents; of copies of the final Construction Documents; and one set of the mylar transparent copies of the final record (“as-built”) drawings and electronic media as required in the General Services Department A/E AutoCAD Standards.

2.9.4 Travel Costs And Expenses: An allowance will be provided for expenditures made by the Consultant or his employees in the interest of the Project for transportation and living when traveling out of Tucson in connection with the Project and for long distance calls and overnight mailings. All such travel shall be at the City’s established per diem rates and shall have the prior approval of the Project Manager.

2.9.5 Public Meetings: Consultant shall participate with the City, and be available for, public meetings dealing with this Project that may require presentation of the proposed facility design and its potential impact on the surrounding area.

2.9.6 Internet On-line Project Hub: Consultant may be required to retain the services of a company providing Internet service that can post the Consultant's contract documents online for retrieval at all times by the Sub-Consultants, Project Manager, and selected individuals associated with the project. The Consultant shall post the revised documentation on a basis consistent with the progress of the work.
ARTICLE 3: CITY-FURNISHED SUPPORT SERVICES

3.1 General

3.1.1 For purposes of aiding the Consultant in the performance of the obligations under this Contract, the City shall furnish the Consultant, upon request, all relevant data in the City's possession and shall direct City officers, agents, and employees to render all reasonable assistance to the Consultant in connection with the Consultant's performance under this Contract. The provision of such aid, assistance, information or services as the Consultant receives from the City shall in no way relieve the Consultant from obligations under this Contract including any obligation to screen information, which the Consultant incorporates into the design.

3.2 Support Services

3.2.1 The City will:

.1 Assign a Project Manager who shall be the representative of the General Services Department A/E Division and the staff person responsible for the day-to-day coordination and administration of all matters pertaining to Consultant's fulfillment of the terms of this Contract.

.2 Compensate The Consultant in accordance with the terms and schedules as described in ARTICLE FOUR.

.3 Provide basic design criteria and scope of services required for each Project in sufficient detail to enable the Consultant to provide a not-to-exceed proposal within the required timeframe for provision of the requested services.

.4 Provide upon the Consultant's request available information pertinent to the Project. It must be noted that the present information on file may be outdated and may lack accuracy. This information (including as-built drawings) will require the Consultant's field verification to ensure reliability.

.5 Provide reasonable access to and make all provisions for Consultant's entry to public and private property as the Consultant requires to perform services.

.6 Review, comment on, and provide final acceptance of all studies, reports, sketches, drawings, specifications, proposals and other documents Consultant presents, within a mutually agreed upon time, so as not to delay Consultant's services. Such reviews, comments, and acceptances by the City shall not be deemed to be for review of the technical accuracy of the Consultant's work which responsibility shall be the Consultant's under this Contract but shall be for monitoring progress, clarifying User Agency questions, certifying payments, determining that Consultant's work complies with the overall Project requirements, and meets an acceptable standard of care.

.7 Provide personnel knowledgeable with regard to existing site and systems to accompany The Consultant during orientation and data collection tasks as necessary and by mutual agreement.
.8 Conduct a Consultant Performance Evaluation at the completion of each Project. These evaluations will be utilized by the City in determining the feasibility of contract extension as provided for herein.

.9 Materials Testing: The City will provide for materials testing to include provisions for the soils and construction materials testing services required during construction of the Project.

.10 Bear all costs incident to City’s compliance with the requirements of this Article.

ARTICLE 4: FINANCIAL CONSIDERATION

4.1 Compensation and Method of Payment

4.1.1 For performance of the services described in ARTICLE 2, the City shall pay the Consultant based on the negotiated hourly billing rates which include overhead, profit and all other costs associated with performing services under this Contract. The Consultant’s negotiated billing rates will be used by the Consultant in developing the "not-to-exceed" proposal amounts for each Project submitted for approval to the Project Manager. Consultant shall not commence any work until the proposal is approved and a Notice to Proceed is issued.

4.1.2 Consultant’s proposal shall include all necessary consultant services for the performance of each Project, to include, as applicable: programming, site development, basic design services, services during bidding and construction, additional services and reimbursable expenses.

4.1.3 Progress payments will be made consistent with City procedures and in compliance with General Services Department A/E procedures. The Consultant shall prepare Pay Requests for the amount representing the actual value of the services rendered and submit these forms to the Project Manager for approval and processing.

4.1.3.1 Schedule I - Basic Design Services: Progress payments will be made consistent with the percent of work complete for each payment period. Final payment for Schedule I services may be made when the construction contract is awarded.

4.1.3.2 Schedule II - Services During Bidding and Construction: The Consultant shall prepare Pay Requests for submittal to the Project Manager for professional services rendered as of the first day of each calendar month in terms of the estimated percentage of construction completed by the Construction Contractor at the time of Consultant’s billing. Final payment may be made when the construction contract is declared satisfactorily accomplished, mylar and electronic as-builts have been forwarded to and approved by the City, and copies of all final, approved submittals have been forwarded to the City.

4.1.3.3 Additional Services: The City shall pay the Consultant only the authorized amounts for the complete performance of each of the required additional services.

4.1.3.4 Reimbursable Expenses (which are all not-to-exceed allowances): Pay Requests shall be submitted with documentation of incurred expenses for reimbursement as approved expenses are incurred but not to exceed the amount agreed upon by the Consultant and the City.
INSTRUCTIONS TO OFFERORS

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:
   For purposes of this solicitation and subsequent contract, the following definitions shall apply:
   - **City:** The City of Tucson, Arizona
   - **Contract:** The legal agreement executed between the City and the Contractor/Consultant.
   - **Contractor/Consultant:** The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City.
   - **Contract Representative:** The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and is responsible for monitoring and overseeing the Contractor's performance under this Contract.
   - **Director of Procurement:** The contracting authority for the City, authorized to sign contracts and amendments thereto on behalf of the City.
   - **May:** Indicates something that is not mandatory but permissible.
   - **Offeror:** The individual, partnership, or corporation who submits a proposal in response to a solicitation.
   - **Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements, if they constitute a substantive requirement, may, at the City’s sole discretion, result in the rejection of a proposal 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 proposal without the information.

2. PRE-SUBMITTAL CONFERENCE: If scheduled, the date and time of a Pre-submittal conference is indicated on the cover page of this document. Attendance at this conference is not mandatory. Written minutes and/or notes will not be available, therefore attendance is encouraged. If an Offeror is unable to attend the Pre-submittal Conference questions may be submitted in writing. Offerors are encouraged to submit written questions, via electronic mail or facsimile, at least five days prior to the Request for Qualifications due date to the Contract Officer listed above. The purpose of this conference will be to clarify the contents of this Request for Qualifications in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this Request for Qualifications 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 Request for Qualifications. Oral statements or instructions will not constitute an amendment to this Request for Qualifications.

3. INQUIRIES: Any question related to the Request for Qualifications shall be directed to the Contract Officer whose name appears above. An offeror shall not contact or ask questions of the department for whom the requirement is being procured. The Contract Officer may require any and all questions be submitted in writing. Offerors are encouraged to submit written questions via electronic mail or facsimile, at least five days prior to the submittal due date. Any correspondence related to a solicitation should refer to the appropriate Request for Qualifications number, page and paragraph number. An envelope containing questions should be identified as such, otherwise it may not be opened until after the official submittal due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the Request for Qualifications will be binding.

4. AMENDMENT OF REQUEST FOR QUALIFICATIONS: The Offeror shall acknowledge receipt of a Request for Qualifications Amendment by signing and returning the document by the specified due date and time.

5. FAMILIARIZATION OF SCOPE OF WORK: Before submitting a statement of qualifications, each Offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting contract performance. The Offeror shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a statement of qualifications will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.

6. PREPARATION OF STATEMENT OF QUALIFICATIONS:
   A. All submittals shall be on the forms provided in this Request for Qualifications package. It is permissible to copy these forms as required. Facsimiles or electronic mail proposals shall not be considered.
   B. At a minimum, your statement of qualification should include the signed Offer form, signed copies of any solicitation amendments and your response to all evaluation criteria.
C. The Offer page shall be signed by a person authorized to submit an offer. An authorized signature on the Offer Page, solicitation Amendment(s), or cover letter accompanying the submittal documents shall constitute an irrevocable offer to sell the good and/or service specified herein. Offeror shall submit any additional requested documentation, signifying intent to be bound by the terms of the agreement.

D. The authorized person signing the submittal shall initial erasure, interlineations or other modifications on the submittal.

E. It is the responsibility of all offerors to examine the entire Request for Qualification package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a response. Negligence in preparing a submittal confers no right of withdrawal after due date and time.

F. The City shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.

G. Offeror must list any subcontractors to be utilized in the performance of the services specified herein. For each subcontractor, details on respective qualifications must be included.

7. SUBMITTAL FORMAT: An original and 3 copies (4 total) should be submitted on the forms and in the format specified in the solicitation. The original copy of the proposal should be clearly labeled “Original”, single-sided and unbound. The material should be in sequence and related to the solicitation. The sections of the submittal should be tabbed and clearly identifiable. Offerors shall also submit one electronic copy of the proposal on cd disc or jump drive in MS Office 2010 or .pdf format. Any confidential information shall be submitted on a separate cd, disc or zip disc. Failure to include the requested information may have a negative impact on the evaluation of the offeror’s proposal.

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.

8. EXCEPTIONS TO CONTRACT PROVISIONS: To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, but only to the extent caused by negligence, recklessness or intentional wrongful conduct including but not limited to, any Subconsultant or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant’s and Subconsultant’s employees, provided, however, that this duty to indemnify, hold harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City. If Consultant or any of Consultant’s employees are certified to receive a premium tax credit or cost sharing reduction which triggers a §4980H (a) or (b) penalty against the City, the Consultant shall indemnify the City from and shall pay any assessed tax penalty.

9. PUBLIC RECORD: All statements of qualifications submitted in response to this Request for Qualifications shall become the property of the City and shall become a matter of public record available for review subsequent to the award notification.

10. CONFIDENTIAL INFORMATION: The City of Tucson is obligated to abide by all public information laws. If an Offeror believes that any portion of a submittal, offer, specification, protest or correspondence contains information that should be withheld, a statement advising the Contract Officer of this fact should accompany the submission and the information shall be so identified wherever it appears. The City shall review all requests for confidentiality and may provide a written determination to designate specified documents confidential or the request may be denied. If the confidential request is denied, such information shall be disclosed as public information, unless the offeror submits a formal written objection.

11. CERTIFICATION: By signature on the Offer page, solicitation Amendment(s), or cover letter accompanying the submittal documents, Offeror certifies:

A. The submission of the offer did not involve collusion or other anti-competitive practices.

B. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.

C. The Offeror 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, meal or service to a public servant in connection with the submitted offer.

D. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to bind the Offeror to the Contract.
12. **WHERE TO SUBMIT STATEMENT OF QUALIFICATIONS:** In order to be considered, the Offeror must complete and submit its submittal to the City of Tucson Department of Procurement at the location indicated, prior to or at the exact date and time indicated on the Notice of Request for Qualifications page. The Offeror’s submittal shall be submitted in a sealed envelope. The words “SEALED SUBMITTAL” with the REQUEST FOR QUALIFICATIONS TITLE, REQUEST FOR QUALIFICATIONS NUMBER, SUBMITTAL DUE DATE AND TIME and OFFEROR’S NAME AND ADDRESS shall be written on the envelope.

13. **LATE SUBMITTALS:** Late submittals will be rejected.

14. **OFFER PERIOD:** In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for ninety (90) days after the submittal due date and time.

15. **WITHDRAWAL OF SUBMITTAL:** At any time prior to the specified solicitation due date and time, an offeror may formally withdraw the submittal by written letter, facsimile or electronic mail from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.

16. **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 to the Offeror whose submittal and subsequent negotiation is most advantageous to the City.

17. **VENDOR APPLICATION:** Prior to the award of a Contract, the successful offeror shall register with the City’s Department of Procurement. Registration can be completed at [http://www.tucsonprocurement.com/](http://www.tucsonprocurement.com/) by clicking on Vendor Services. Please note that email notifications of newly published solicitations and amendments will be provided to those vendors that select email as their preferred delivery method in their vendor record.

18. **CITY OF TUCSON BUSINESS LICENSE:** It is the responsibility of the Contractor to have a City of Tucson Business License throughout the life of this contract or a written determination from the City's Business License Section that a license is not required. At any time during the contract, the City may request the Contractor to provide a valid copy of the business license or a written determination that a business license is not required. Application for a City Business License can be completed at [http://www.tucsonaz.gov/etax](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.

19. **UPON NOTICE OF INTENT TO AWARD:** The apparent successful offeror shall sign and file with the City, within five (5) days after Notice of Intent to Award, all documents necessary to the successful execution of the Contract.

20. **AWARD OF CONTRACT:** Notwithstanding any other provision of the Request for Proposal, the City reserves the right to:
   (1) waive any immaterial defect or informality; or
   (2) reject any or all proposals, or portions thereof; or
   (3) reissue the Request for Qualifications.

   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 and the City Attorney. 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.

21. **SUBMITTAL RESULTS:** The name(s) of the successful offeror(s) will be posted on the Procurement Department's Internet site at [http://www.tucsonprocurement.com/](http://www.tucsonprocurement.com/) upon issuance of a Notice of Intent to Award or upon final contract execution.

22. **PROTESTS:** A protest shall be in writing and shall be filed with the Director of Procurement. A protest of a Request for Qualification shall be received at the Department of Procurement not less than five (5) working days before the Request
for Qualification due date. A protest of a proposed award or of an award shall be filed within ten (10) days after issuance of notification of award or issuance of a notice of intent to award, as applicable. A protest shall include:

A. The name, address, and telephone number of the protestant;
B. The signature of the protestant or its representative;
C. Identification of the Request for Proposal or Contract number;
D. A detailed statement of the legal and factual grounds of protest including copies of relevant documents; and
E. The form of relief requested.
SELECTION PROCESS

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

- **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.

- **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 with the committee making its final selection following the second-step. 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.

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. 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) Statement of Qualifications in response to the Evaluation Criteria
C) 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.

- Experience and Qualifications of Team (40 points)
- Firm Experience on Similar Projects (30 points)
- Qualifications of the Firm (20 points)
- Other Considerations (10 points)
1. EXPERIENCE AND QUALIFICATIONS OF TEAM (40 points)

A. Provide experience and qualifications of key team members and what their roles would be on a project. Also include 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:

1. List registered in-house Architects/Engineers, including Principals on the date of this submittal, including name, discipline and registration number. Please be clear as to what their roles will be on a project and who the City’s main point of contact will be.

2. List, show in an organizational chart, and provide resumes for, the KEY individuals who are licensed in Arizona and who will be responsible for, and seal the documents for, the following disciplines:
   a. Principal in Charge
   b. Architecture
   c. Programming and Site Development
   d. Landscape Design
   e. Civil Engineering
   f. Structural Engineering
   g. Mechanical Engineering
   h. Electrical Engineering
   i. Furnishings and Graphics
   j. Registered Communications Distribution Designer (RCDD)
   k. Environmental (i.e., asbestos/lead paint)
   l. Water Quality/Harvesting and Stormwater
   m. Construction Cost Estimating
   n. Construction Surveillance
   o. Other

2. FIRM EXPERIENCE AND TEAM ON SIMILAR PROJECTS (30 points)

A. Provide the experience of the proposed firm on similar projects. Identify type and location of similar work to illustrate the work quality. List specific references that may be contacted. Show how the experience relates to the categories outlined.

B. List completed projects for which your firm was the architect or engineer of record, including project title, client name, construction cost and completion date.

C. Scoring will be based upon information obtained from City Departments, Project Managers, outside agencies, and references provided by the consultant.

NOTE: Projects used as examples of similar work shall be clearly noted if the work was done by individuals while employed by other firms. The only projects which you may claim without attribution are those projects actually produced by your firm. Improper or misleading credit for projects, in our view, is an adverse reflection on a firm’s integrity and may be grounds for rejection of those projects from your experience record.

3. QUALIFICATIONS OF FIRM (20 points)

A. 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.

B. List experience with providing prompt Construction Administration Services as described in the Scope of Services.

C. List experience with establishing estimates of probable construction costs.

D. Provide three or more project owners for reference, including name, address and phone number. (Inquiry will include: promptness, success in meeting project budgets, design ability and relationship with owner and contractor)

E. Describe the analytical tools, resources or methodologies commonly used by your 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 project manager and core project staff 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.

4. OTHER CONSIDERATIONS (10 points)

A. List and describe any Special or Unique Knowledge, Investigation & Data Management Approach Pertinent to Work.

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 in this one-step process.

RFQ SUBMISSION CHECKLIST

A. Cover Letter
B. Signed Offer
C. Statement of Qualifications
D. Any and All RFQ Amendments Signed
E. Signed FTA and HUD Certifications
SPECIAL TERMS AND CONDITIONS

1. SOFTWARE COMPATIBILITY: 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 Consultant’s 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

<table>
<thead>
<tr>
<th>COVERAGE AFFORDED</th>
<th>LIMITS OF LIABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worker’s Compensation</td>
<td>Statute</td>
</tr>
<tr>
<td>Commercial General Liability Insurance</td>
<td>$1,000,000 – Bodily Injury</td>
</tr>
<tr>
<td>Including:</td>
<td>Combined Single Limit</td>
</tr>
<tr>
<td>A. Products &amp; Completed Operations</td>
<td>$100,000 Property Damage</td>
</tr>
<tr>
<td>B. Blanket Contractual</td>
<td></td>
</tr>
<tr>
<td>C. Premises-Operations-Personal Injury</td>
<td></td>
</tr>
<tr>
<td>Professional Liability Insurance (Errors and Omissions)</td>
<td>$1,000,000 (Minimum)</td>
</tr>
<tr>
<td>(See Special Conditions)</td>
<td>Combined Single Limit</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Comprehensive Automobile Liability Insurance including: non-owned, and Hired vehicles</th>
<th>$1,000,000 - Bodily Injury</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Combined Single Limit</td>
</tr>
<tr>
<td></td>
<td>$100,000 Property Damage</td>
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</tbody>
</table>

SPECIAL CONDITIONS:

1. THE CITY OF TUCSON & REGIONAL TRANSPORTATION AUTHORITY (RTA) 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 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.

3. PROJECT AWARD: The City intends to solicit proposals from multiple firms when practicable, or if required by the funding Agency. However, the City reserves the right to award individual Projects under this contract in any way deemed to be in the best interest of the City. The City shall not reimburse consultants for the cost of proposal preparation. Each project shall be negotiated and approved by the City Project Manager or designee prior to issuance of Notice to Proceed. The consultant shall not begin any work prior to receipt of Notice to Proceed. Individual projects not to exceed $250,000 unless a written waiver is obtained from the Director of Procurement.

4. CONTRACT TERM AND RENEWAL: The term of this contract shall commence upon award and shall remain in effect for a period of one (1) year, unless terminated, canceled or extended as otherwise provided herein. The Consultant agrees that the parties shall have the right, to renew the Contract for four (4) additional one (1) year periods, or portions thereof. In the event that the parties exercise such rights, all terms, conditions, and provisions of the original contract shall remain the same and apply during the renewal period with the possible exception of price and minor scope additions and/or deletions.

5. RATE ADJUSTMENT: The City will review fully documented requests for rate adjustment after any contract has been in effect for one (1) year. Any rate adjustment will only be made at the time of contract extension and will be a factor in the extension review process. The City will determine whether the requested rate adjustment or an alternate option, is in the best interest of the City. Any rate adjustment will be effective upon the effective date of the contract extension.

6. PRINCIPAL CONSULTANT’S RESPONSIBILITY: The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this Contract. The Consultant shall without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. Additionally, when modification to a construction contract is required because of an error or deficiency in the services provided under this Professional Design Services Contract, the City shall consider the extent to which the Consultant may be reasonably liable.

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

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

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

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

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

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

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

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

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

APPENDIX A - SBE Program Provisions for Professional Services

8. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS:**
The Consultant shall be required to comply with DBE Program requirements, if goals are applicable, on all federally funded projects under the resulting contract. The DBE program and policies are codified in the Code of Federal Regulations (49 CFR 26). It is the responsibility of all contractors, vendors, suppliers and others who are interested in contracting with the City of Tucson on federal contracts to read and become familiar with 49 CRF 26. The Consultant shall submit to the Department of Procurement, Business Enterprise & Compliance Program during the negotiation phase(s), either a completed statement of proposed DBE Participation Plan or an Affidavit of Good Faith Efforts indicating whether the request is for a full or partial waiver.

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

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

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

APPENDIX B - DBE Program Provisions for Professional Services
9. **FTA REQUIREMENTS:** See Appendix C.

10. **HUD REQUIREMENTS:** See Appendix D.

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

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

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

12. **SECTION 3 CLAUSE:** Sec. 135.38 Section 3 clause. All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
1. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract without prior written consent of the City’s Director of Procurement.

2. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101, et seq.) and applicable Federal regulations under the Act.

3. **APPLICABLE LAW:** This Contract shall be governed, and the City and Contractor shall have all remedies afforded to each, by the Tucson Procurement Code and the law of the State of Arizona. State law claims shall be brought only in Pima County Superior Court.

4. **ARBITRATION:** It is understood and agreed that no provision of the Contract relating to arbitration or requiring arbitration shall apply to or be binding upon the City except by the City’s express written consent given subsequent to the execution of the Contract. However, if both parties agree, disputes may be resolved through arbitration. The dispute shall be resolved as provided for in A.R.S. Sec. 12-1501, et seq. Consultant shall continue to render the services required by this Contract without interruption, notwithstanding the provisions of this section.

5. **ASSIGNMENT-DELEGATION:** No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of the Contractor shall be made without prior written permission of the City’s Director of Procurement. The City shall not unreasonably withhold approval and shall notify the Contractor of the City’s position by written notice.

6. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker’s Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.

7. **CLEAN UP:** The Contractor shall at all times keep the contract area, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of the City. Upon completion of the repair, the Contractor shall leave the work and premises in clean, neat and workmanlike condition.

8. **COMMENCEMENT OF WORK:** The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives purchase order or is otherwise directed to do so, in writing, by the City.

9. **CONFIDENTIALITY OF RECORDS:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.

10. **CONFLICT OF INTEREST:** Subconsultants who design and/or develop specifications for materials for this project will be precluded from contract award for that item if a solicitation is issued for the item.

11. **CONTRACT MODIFICATIONS:** No work outside of the contracted scope of work shall begin without an executed Contract Amendment and a written Notice to Proceed. Contractor shall notify COT immediately when projected hours for individuals under contract are within no less than 20% of exceeding the proposed hours. All direction regarding tasks, deliverables and level of effort shall originate with the designated City Project Manager/Contract Representative or the Department of Procurement. No direction shall be taken from, nor shall any work commence with direction from, any other party.

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

   A. Amend the contract or enter into supplemental verbal or written agreements;
   B. Grant time extensions or contract renewals;
   C. Otherwise modify the scope or terms and provisions of the contract.
This Contract shall only be modified with the approval of the Department of Procurement. Except in the case of a documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Procurement Department through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.

13. CONTRACT: The Contract shall be based upon the Request for Proposal issued by the City and the Offer submitted by the Contractor in response to the Request for Proposal. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Request for Proposal. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City’s Director of Procurement, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

14. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH: Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.

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

16. EXCLUSIVE POSSESSION: All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.

17. FEDERAL IMMIGRATION LAWS AND REGULATIONS: Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

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

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

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

19. GRATUITIES: The City may, by written notice to the Contractor, terminate this Contract if it is found that gratuities, in the form of entertainment, gifts, meals or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the
performing of such Contract. In the event this Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

20. HUMAN RELATIONS: Contractor shall abide by the provisions of the Tucson City Code Chapter 28, Article XII.

21. INDEMNIFICATION: To the fullest extent permitted by law, Consultant, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson and Regional Transportation Authority (RTA), its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Consultant relating to work or services in the performance of this Contract, but only to the extent caused by negligence, recklessness or intentional wrongful conduct including but not limited to, any Subconsultant or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant’s and Subconsultant’s employees, provided, however, that this duty to indemnify, hold harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City. If Consultant or any of Consultant’s employees are certified to receive a premium tax credit or cost sharing reduction which triggers a §4980H (a) or (b) penalty against the City, the Consultant shall indemnify the City from and shall pay any assessed tax penalty.

22. INDEPENDENT CONTRACTOR: It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

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

23. INSPECTION AND ACCEPTANCE: All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the Contractor’s risk and may be returned to the Contractor. If returned, all costs are the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.

24. INTERPRETATION-PAROLE EVIDENCE: This Contract is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or consent in the course of performance under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.

25. LICENSES: Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

26. LIENS: All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City’s request, the Contractor shall provide a formal release of all liens.

27. NO REPLACEMENT OF DEFECTIVE TENDER: Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.

28. 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.
29. OVERCHARGES BY ANTITRUST VIOLATIONS: The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.

30. 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.

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

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

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

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

32. PROTECTION OF GOVERNMENT PROPERTY: The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such property, the Contractor shall replace or repair the damage at no expense to the City, as determined and approved by the City’s Director of Procurement. If the Contractor fails or refuses to make such repair or replacement, the City will determine a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.

33. PROVISIONS REQUIRED BY LAW: Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.

34. RECORDS: Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of the Contractor and/or any subcontractors. Said audit shall be limited to this Contract.

Consultant shall maintain all pertinent files, records, and documents which relate to the delivery of the services provided in this Contract. Supporting documents, files, and records shall be retained by Consultant for at least five (5) years after the termination of this Contract.

35. RIGHT TO ASSURANCE: Whenever one party to this Contract has reason to question, in good faith, the other party’s intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as the other party’s intent not to perform and as a cause for possible Contract termination.
36. **RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any Contract as awarded or to be awarded.

37. **RIGHTS AND REMEDIES:** No provision in this document or in the Contractor's proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

38. **SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.

39. **SHIPMENT UNDER RESERVATION PROHIBITED:** No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.

40. **SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Director of Procurement. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.

41. **SUBSEQUENT EMPLOYMENT:** The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Director of Procurement is received by the parties to this Contract, unless the notice specifies a later time.

42. **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.

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

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

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

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

   In the opinion of the City, the Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;
The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;

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

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

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

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

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

APPENDIX B – DBE PROVISIONS

APPENDIX C – FTA TERMS AND CONDITIONS

APPENDIX D – HUD REQUIREMENTS
   Section 3 Requirements
   HUD 5369-B
   HUD 5369-C
   HUD 5370-C
RFQ 141065

APPENDIX A – SBE PROVISIONS
SBE PROGRAM PROVISIONS FOR PROFESSIONAL DESIGN SERVICES

PROJECT GOAL

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

___ % SBE

I. SMALL BUSINESS ENTERPRISE REQUIREMENTS

A. DEFINITIONS

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

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

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

Eligible Contract - Any contract undertaken by the City, unless otherwise precluded by law, provided the estimate meets or exceeds fifty thousand dollars ($50,000). An Eligible Contract does not include any project in which the estimated contract value is below fifty thousand dollars ($50,000); contracts which require a disadvantaged business enterprise goal pursuant to federal law; contracts awarded under sections 28-21 (sole source procurement), 28-22 (emergency procurement) or 28-23 (special procurement) of the City Procurement Code.

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

Small Business Enterprise (SBE) – A local small business that is an independent and continuing enterprise for profit, performing a Commercially Useful Function, that has completed the application process for certification with the City of Tucson, and has met the requirements set forth in Title 49, Code of Federal Regulations, (49 CFR Part 26).
**Subcontractor and Subconsultant** – A person or entity that contracts to perform work or render service to a Contractor or to another Subcontractor as part of a contract with the City.

B. **APPLICABILITY**

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

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

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

The City of Tucson’s most recent SBE Directory contains the complete listing of those firms which are currently certified with the City, and therefore eligible to participate as an SBE on a project. If the name of an SBE firm does not appear in directories, it shall be the contractor’s responsibility to ascertain the certification status of the SBE and determine the eligibility of the firm to meet the established goal. The contractor may accomplish this by calling the City’s Department of Procurement, Business Enterprise & Compliance Program at (520) 837-4000 for assistance.

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

C. **SBE PARTICIPATION**

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

D. **SBE GOALS**

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

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

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

1. Contractors who utilize certified SBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a

Revised September, 2014
signed contract value with the SBE firm and may only take credit for the dollar value of that contract towards satisfying its SBE commitment in their proposed SBE plan. The dollar value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values and cannot be specified as a range.

2. If a certified SBE subcontractor enters into second tier subcontracts consistent with the standard industry practices, such SBE subcontractor is performing a commercially useful function. If an SBE subcontractor subcontracts a significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it shall be presumed that the SBE is not performing a commercially useful function. Therefore, contractors are required to identify and report the use of any second tier subcontractors on the project on the Statement of Proposed SBE Plan form.

3. Credit will be given when a SBE subcontracts part of the work of its contract to another firm only if the SBE’s subcontractor is itself a SBE.

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

1. If an SBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable SBE participation goal.

2. If an SBE supplier is a wholesaler warehousing the goods supplied or is a manufacturer’s representative, the total contract amount is credited toward the established SBE goal; however, only twenty-five percent (25%) of the total SBE project goal may be met in this manner.

3. If an extraordinarily large proportion of a contract price is for equipment or supplies, a lower project goal may be set than otherwise would be required, or the twenty-five percent (25%) limit for suppliers may be increased, or a combination of these two methods may be utilized.

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

II. SUBMITTAL REQUIREMENTS

A. SUBMISSION OF AN SBE PLAN

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

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

B. REVIEW OF SBE PLANS

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

III. GOOD FAITH EFFORT

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

a. Documentation of communication with the City’s Department of Procurement seeking technical/professional assistance identifying available SBE’s.

b. Copies of written notification to Certified SBE’s regarding subcontracting opportunities on a project.

c. Documentation of efforts made to select portions of work for SBE subcontracting in order to increase the likelihood of meeting the SBE goals, including where appropriate breaking down subcontracts into economically feasible units in order to facilitate SBE participation.

d. Documentation of efforts to assist and negotiate with SBE’s for specific sub-proposals and reasons for rejection of any such offer, including the names, addresses, and telephone numbers of SBE’s who were contacted and reason for the rejection.

e. As to each SBE contacted which was considered not to be qualified, a written statement of the reasons for the conclusion.

f. Written quotes or records of verbal quotes solicited from all SBE’s seeking subcontract work at the time of the proposal submittal.

g. Verification that the offeror rejected available SBE’s because they submitted proposals which were unreasonably high, or they were not qualified. Such verification shall include a statement of the amounts of all proposals received from potential Subcontractors and all relevant dates.

The City’s Procurement Director shall review the waiver and approve the waiver where the contractor has demonstrated good faith efforts or deem the contractor nonresponsive where they failed to meet the good faith efforts and shall recommend that the Project Manager reject the proposal.
Right to Appeal Good Faith Effort Waiver or Plan Decision  An aggrieved party has a right to protest a good faith waiver request or plan decision made by the Procurement Director as follows:

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

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

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

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

Pursuant to Administrative Procedures and Policies, the Procurement Director May Verify and/or Clarify Information as it Relates to the Affidavit of Good Faith Efforts, and/or the Statement of Proposed SBE Plan.

IV. MISCELLANEOUS PROVISIONS

A. Subcontractor Performance & Substitution Requests:

The contractor’s distinct contract items of work to be awarded to SBE’s shall be performed by the designated SBE.

In the event that an SBE is unable or unwilling to fulfill its agreement with the contractor, the contractor shall immediately notify the Procurement Department’s Business Enterprise & Compliance Program, the Contract Officer and the Project Manager. The SBE firm can be terminated only for good cause. Good cause includes a situation where the SBE subcontractor has failed or refused to perform the work of its subcontract in accordance with normal industry standards.

The contractor shall immediately take reasonable good faith efforts to obtain another certified SBE to perform an equal or greater dollar value of the work. The contractor shall provide all pertinent information regarding the SBE substitution request including but not limited to:

1. The name of the original SBE firm, the description of work, the dollar value and the reason for the substitution request;
2. The name of the proposed substitute SBE’s, description of proposed work and estimated dollar value of the work and any relevant information such as a written quote, etc.
All SBE subcontractor substitutions and any subcontractor substitution pursuant to the Tucson Procurement Code Section 28-48(2), may only be allowed at the sole discretion of the Procurement Director. Approval must be obtained prior to the substitute SBE beginning the work. Any failure on the part of an SBE will not relieve the contractor of responsibility for meeting the SBE participation goal on the contract.

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

If the contractor fails or refuses to comply, the City may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the City may terminate the contract for cause and/or pursue any other remedy available to the City.

Contract items eliminated from the project, with the approval of the Project Manager, will not reduce the contractor's credit for SBE participation. The SBE must perform a commercially useful function, that is, the SBE must manage, perform, and supervise a distinct element of work.

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

B. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the Department of Procurement, Business Enterprise & Compliance Program Prime Contractor Report of Subcontractor Utilization. The report will include a section to rate the performance of project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 regarding a subcontractor will require the prime contractor to complete a performance evaluation report documenting the cause for the sub-performance rating. The City of Tucson Project Manager must concur with all poor performance ratings. Repeated poor performance may result in action by the Procurement Director up to and including decertification in accordance with Sec. 28-148(3)(B) of the Tucson Procurement Code.

C. MONITORING PAYMENTS TO SUBCONTRACTORS

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

A copy of the SBE contract provisions shall be included with every subcontract.
CITY OF TUCSON
DEPARTMENT OF PROCUREMENT BUSINESS ENTERPRISE & COMPLIANCE PROGRAM
SUBCONTRACTORS LIST AND STATEMENT OF
PROPOSED SBE PLAN

ALL SBE’s MUST BE IDENTIFIED WITH THE CONTRACT DOLLAR VALUE. A SBE GOOD FAITH EFFORT WAIVER IS REQUIRED IF THE SBE PARTICIPATION IS BELOW THE ESTABLISHED PROJECT GOAL.

Pursuant to Administrative procedures and policies, the Procurement Director may verify and/or clarify information as it relates to the Affidavit of Good Faith Efforts and/or the Statement of Proposed SBE Plan.

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<th>Subcontractor’s Name</th>
<th>Trade/Industry</th>
<th>Dollar Value of Contract (SBE Only)</th>
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Project Amount $_________________________

Total Claimed SBE Participation $_______________________ %

I hereby certify by signing below that the foregoing SBE firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project. The information shown above is a true reflection of the proposed subcontracts expressed as a percentage of the base bid.

Company Name: ______________________________________

Signature: ___________________________________________ Phone No. __________________

Date: ________________ Name & Title: ________________________________

Revised September 2014
A COMPLETED SBE PLAN AND/OR AFFIDAVIT OF GOOD FAITH EFFORTS MUST BE SUBMITTED WITH THE PROPOSAL.

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

AFFIDAVIT OF GOOD FAITH EFFORTS

CONTRACT NO: __________________ PROJECT NAME: ______________________________________________________

COMPANY NAME: _______________________________________________________________________________________

CONTACT NAME: __________________________ PHONE NUMBER: ___________________ FAX NUMBER: ___________________

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

The intent of this certification is to document the good faith efforts implemented by the contractor in soliciting and utilizing SBE firms to meet the City of Tucson’s SBE goal. This certificate will assist the City of Tucson’s Department of Procurement, Business Enterprise & Compliance Program in determining whether the contractor has implemented comprehensive good faith efforts. Pursuant to Administrative procedures and policies, the Procurement Director may verify and / or clarify information as it relates to the Affidavit of Good Faith Efforts and / or the Statement of Proposed SBE Plan. The burden of proof rests with the contractor.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a SBE Plan must also be submitted.
2. Provide a brief summary of why the SBE goal on this project has not been met. Attach supporting documentation.

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

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

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

   Yes ____    No ____    Date of Contact ___________    Contact Person _______________________________________

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

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

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

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

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<tr>
<th>Name of SBE Firm</th>
<th>Explanation for Rejecting Quotes</th>
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10. Were any bids from SBE Subcontractors that were no more than 15% or $250,000 greater than the accepted Non-SBE Subcontractor rejected? If so, describe in detail.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

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

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
RFQ 141065

APPENDIX B – DBE PROVISIONS
DBE PROGRAM PROVISIONS FOR PROFESSIONAL SERVICES

I. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

The Disadvantaged Business Enterprise (DBE) Program is implemented as part of the City of Tucson's responsibility as a recipient of federal financial assistance. The DBE program and policies are codified in the Code of Federal Regulations (49 CFR 26). It is the responsibility of all contractors, vendors, suppliers and others who are interested in contracting with the City of Tucson on federal contracts to read and become familiar with this part of the Code of Federal Regulations.

PROJECT GOAL

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

_______ % DBE

A. DEFINITIONS

**Certified Disadvantaged Business Enterprise (DBE)** - A Disadvantaged Business Enterprise which has been certified under the Arizona AZUCP.

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

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

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

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

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

(a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**Eligible Contract** - Any construction, or construction services contract undertaken by the City, unless otherwise precluded by law, provided the estimate for construction meets or exceeds fifty thousand dollars ($50,000). An Eligible Contract does not include any project in which the estimated contract
value is below fifty thousand dollars ($50,000); contracts which require a disadvantaged business enterprise goal pursuant to federal law; contracts awarded under sections 28-21 (sole source procurement), 28-22 (emergency procurement) or 28-23 (special procurement) of the Tucson Procurement Code.

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

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

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

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

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

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

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

**Set-Aside** - A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

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

**Socially and Economically Disadvantaged Individual** - Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is —
(a) Any individual who the City of Tucson finds to be a socially and economically disadvantaged individual on a case-by-case basis.
(b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
   (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
   (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Ju'valu, Nauru, Federated States of Micronesia, or Hong Kong;
(v) "Subcontinent Asian Americans," which includes persons who origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
(vi) Women;
(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

B. APPLICABILITY

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

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

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

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

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

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

C. DBE PARTICIPATION

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

3 Revised September 2014
D. **DBE GOALS**

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

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

1. Prime Contractors who utilize certified DBE firms whose participation is included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the DBE firm and may only take credit for the dollar value of that contract towards satisfying its DBE commitment in their proposed DBE plan. The dollar value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values that may be listed in the bid schedule and cannot be specified as a range.

2. When a DBE participates in a contract, only the work actually performed by the DBE will count toward DBE goals.

   a. Credit will be given for the entire amount of that portion of a contract by the DBE performing a commercially useful function, including the cost of supplies and materials obtained by the DBE for the work of the contract (including supplies purchased or equipment leased by the DBE except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

   b. Credit will be given for the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a federally funded contract, toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

   c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. The value of work that a non-DBE subcontractor subcontracts (second-tier) to a DBE firm may count toward DBE goals. Therefore, **prime contractors are required to identify and report the use of any second tier subcontractors on the project on the DBE Plan form**.

   d. Credit will be given when a DBE subcontracts part of the work of its contract to another firm only if the DBE's subcontractor is itself a DBE.

3. When a DBE is used as the source for materials or supplies:

   a. If a DBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable DBE participation goal.

   b. If a DBE supplier is a regular dealer (a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment are bought, kept in stock, and regularly sold or leased to the public), 60% of the cost of the materials or supplies will be credited toward DBE goals.
4. Where a contractor engages in a joint venture to satisfy its DBE commitment, the DBE joint venture partner must be responsible for a distinct and clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. DBE joint ventures do not have to be certified as a joint venture by the City prior to bid opening. However, prime contractors must submit information at the time of bid opening that includes a copy of the joint venture agreement and clearly outlines the work to be performed by the DBE joint venture partner, including the dollar amount and percentage of the contract to be performed.

When a DBE performs as a joint venture, the City's Department of Procurement, Business Enterprise & Compliance Program will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

II. SUBMITTAL REQUIREMENTS

A. SUBMISSION OF A DBE PLAN

The DBE Plan and/or Affidavit of Good Faith Efforts must be submitted at time of final contract or project negotiations.

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

If the completed Statement of Proposed DBE Plan or, if necessary, a documented waiver application is not approved, the contractor may be considered non-responsive and ineligible for contract or project award.

B. DBE ACKNOWLEDGMENT OF PARTICIPATION

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

C. REVIEW OF DBE PLANS

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

III. GOOD FAITH EFFORT

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

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

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

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

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

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

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

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

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the City of Tucson or contractor.
G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

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

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

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

IV. ADMINISTRATIVE RECONSIDERATION

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

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

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

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

FAILURE TO SUBMIT THE REQUIRED INFORMATION BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE CONTRACTOR TO BE DEEMED NONRESPONSIVE.

PURSUANT TO ADMINISTRATIVE PROCEDURES AND POLICIES, THE PROCUREMENT DIRECTOR MAY VERIFY AND/OR CLARIFY INFORMATION AND REQUEST RESUBMITTAL OF
V. GENERAL WAIVER OR REDUCTION OF DBE GOALS

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

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

VI. MONITORING PAYMENTS TO SUBCONTRACTORS

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

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

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

A. When a subcontractor has completed all the tasks called for in the subcontract, the subcontractor will submit a written request to the prime contractor for an acceptance inspection and release of all retention.

B. Within 10 days of receipt of an inspection request by a subcontractor, the contractor shall schedule an inspection / walk through for acceptance of the work.

C. Within 30 days of the acceptance of a subcontractors work, the prime contractor shall pay all retention owed to a subcontractor.

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

Prime contractors are asked to submit the attached Certification of Payments, for each DBE subcontractor utilized on this project, once that portion of the work has been completed and the subcontractor has been paid in full.
Prime contractors will report the actual value of any contract to DBE firms for work committed to them at the time of the contract award. Contractors must submit the attached Supplier & Subcontractor Utilization List Final Payment Record to the Department of Procurement, Business Enterprise & Compliance Program with their request for final payment. The Final Payment Record will record total dollar amounts paid to both DBE and non-DBE suppliers and subcontractors.

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

A copy of the DBE contract provisions shall be included with every subcontract.

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

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

VII. MISCELLANEOUS PROVISIONS

A. CONTRACT PROVISIONS

The contractor's distinct contract items of work to be awarded to DBE's shall be performed by the designated DBE.

In the event that an DBE is unable or unwilling to fulfill its agreement with the contractor, the contractor shall immediately notify the Procurement Department's Business Enterprise Program, the Contract Officer and the Project Manager. The DBE firm can be terminated only for good cause. Good cause includes a situation where the DBE subcontractor has failed or refused to perform the work of its subcontract in accordance with normal industry standards.

The contractor shall immediately take reasonable good faith efforts to obtain another certified DBE to perform an equal or greater dollar value of the work. The contractor shall provide all pertinent information regarding the DBE substitution request including but not limited to:

1. The name of the original DBE firm, the description of work, the dollar value and the reason for the substitution request;
2. The name of the proposed substitute DBE's, description of proposed work and estimated dollar value of the work and any relevant information such as a written quote, etc.

All DBE subcontractor substitutions and any subcontractor substitution pursuant to the Tucson Procurement Code Section 28-48(2), may only be allowed at the sole discretion of the Procurement Director. Approval must be obtained prior to the substitute DBE beginning the work. Any failure on the part of an DBE will not relieve the contractor of responsibility for meeting the DBE participation goal on the contract.

DBE contract work items shall not be performed by the contractor in lieu of subcontracting, without obtaining approval as outlined above.
If the contractor fails or refuses to comply, the City may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the City may terminate the contract for cause and/or pursue any other remedy available to the City.

Contract items eliminated from the project, with the approval of the Project Manager, will not reduce the contractor's credit for DBE participation. The DBE must perform a commercially useful function, that is, the DBE must manage, perform, and supervise a distinct element of work.

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

B. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to complete the Department of Procurement, Business Enterprise & Compliance Program Supplier and Subcontractor Utilization List. Final Payment Record. The report will include a section to rate the performance of project subcontractors from 1 – 5, based on industry standards. The performance rating section shall be completed. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 regarding a subcontractor will require the prime contractor to complete a performance evaluation report documenting the cause for the sub-performance rating. The City of Tucson Project Manager must concur with all poor performance ratings. Repeated poor performance may result in action by the Procurement Director up to and including decertification in accordance with Sec. 28-148(8)(8) of the City of Tucson SBE ordinance.

C. RECORD-KEEPING

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

D. FALSE, FRAUDULENT OR DISHONEST CONDUCT

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

E. NON-DISCRIMINATION

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

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<tr>
<th>Contract No.</th>
<th>Project Name</th>
<th>Subcontractor's Name</th>
<th>Trade/Industry</th>
<th>Proposed Dollar Value of Contract (DBE Only)</th>
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*There is no requirement to list non-DBE Subcontractor's with contract value less than $5,000.

Project Amount $_____________________

Total Claimed DBE Participation $__________________ ______%  

I hereby certify by signing below that the foregoing firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project.

Company Name: ____________________________________________

Signature: ____________________________________________ Phone No. _______________________

Date: ______________ Name & Title: ____________________________

Revised September 2014
City of Tucson
Department of Procurement, Business Enterprise & Compliance Program

AFFIDAVIT OF GOOD FAITH EFFORTS

CONTRACT NO: _______  PROJECT NAME: ________________________________

COMPANY NAME: _________________________________________________________________________________________

CONTACT NAME: ___________________  PHONE NUMBER: ___________________  FAX NUMBER: ___________________

WHERE A CONTRACTOR FAILS TO EXERCISE “GOOD FAITH” EFFORTS TO MEET DBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE OFFEROR WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the offeror in soliciting and utilizing DBE firms to meet the City of Tucson’s DBE goals. This certificate will assist the City of Tucson’s Department of Procurement, Business Enterprise & Compliance Program in determining whether the offeror has implemented comprehensive good faith efforts. Pursuant to Administrative procedures and policies, the Procurement Director may verify and/or clarify information as it relates to the Affidavit of Good Faith Efforts and/or the Bidder’s Statement of Proposed DBE Plan. The burden of proof rests with the offeror.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a DBE plan must also be submitted.
2. Provide a brief summary of why the DBE goal on this project has not been met. Attach supporting documentation.


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


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


Revised September 2014
5. Which DBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to DBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

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<tr>
<th>Name of Company Contacted</th>
<th>Contact Person</th>
<th>Dates of Contact</th>
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6. Was the City of Tucson’s Department of Procurement, Business Enterprise & Compliance Program technical or professional staff contacted for assistance? (Note that it is the policy of the Procurement Department to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the DBE goals.) Attach necessary documentation.

Yes ____  No _____  Date of Contact ________________  Contact Person ________________________________

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

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Revised September 2014
8. Describe any additional efforts undertaken to assist DBE firms (e.g. bonding assistance, lines of credit, etc.).

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

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<thead>
<tr>
<th>Name of DBE Firm</th>
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10. Were any proposals from DBE subcontractors that were no more than 15% or $250,000 greater than the accepted Non-DBE subcontractor rejected? If so, describe in detail.

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

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

DBE ACKNOWLEDGMENT OF PARTICIPATION

CONTRACT NO._________________  PROJECT NAME:______________________________________________________

TRADE/INDUSTRY/SUPPLY/EQUIPMENT:________________________________________________________________

DOLLAR VALUE OF THE CONTRACT:_____________________________________________________________________

DBE Firm:_________________________________________________________________________________________

DBE Signature:_____________________________________________________________________________________

Phone No. ___________________________  Date: ___________________________

Name:_____________________________________________________________________________________________

Title:_____________________________________________________________________________________________

I hereby certify that _______________________________________________________________________________ is participating in the contract as provided in the Proposed DBE Plan and that the information shown above is a true reflection of the proposed subcontract.

Prime Contractor's Signature:_________________________________________________________________________
City of Tucson  
Department of Procurement, Business Enterprise & Compliance Program

SUPPLIER AND SUBCONTRACTOR UTILIZATION LIST
FINAL PAYMENT RECORD

Pursuant to administrative procedures and policies, the Procurement Director may verify and/or clarify and request resubmittal of information to verify or clarify information as it relates to the contractor's Final Payment Record.

CONTRACT No. ___________ Final Contract Amount: ___________ Project Name: ___________

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Revised September 2014
CERTIFICATION OF PAYMENTS TO DBE FIRMS

Project Name: ________________________________
COT Job No.: _______________  Contract No.: ________________________________
Fed Job No.: _______________  State TRACS No.: ________________________________

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

Firm Name ________________________________, was paid $ ____________________

The subcontract was completed on ____________________

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

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

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

____________________________________________
Prime Contractor

By: ________________________________
Title: ________________________________
Date: ________________________________

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

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

____________________________________________
Subcontractor/Supplier/Manufacturer

By: ________________________________
Title: ________________________________
Date: ________________________________

Revised September 2014
SUBCONTRACTOR PROMPT PAYMENT REQUIREMENTS

CONTRACT NO: ___________________________

PROJECT NAME: ___________________________

DBE Contract Provisions -- Section VI. Monitoring Payments to Subcontractors

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

The prime contractor is to pay all retention owed to a subcontractor within 30 days of satisfactory completion of the contracted work. For the purposes of this section, a subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and accepted by the prime contractor as required by the City of Tucson.

Payment of retention by a prime contractor to subcontractors following completion and acceptance of work is NOT dependent on the billing of, or payment from, the City of Tucson for the retention release.

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

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

By signing below I acknowledge and agree to the DBE subcontractor prompt payment requirements.

Company Name: _______________________________________

Signature: ____________________________________________

Name & Title: _________________________________________

Date: ________________________________________________
RFQ 141065

APPENDIX C – FTA TERMS AND CONDITIONS
FEDERAL TRANSIT ADMINISTRATION
TERMS, CONDITIONS, AND CERTIFICATIONS

RFQ 141065
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
  Access to Third Party Contract Records
  Prohibitions Against Exclusionary or Discriminatory Specifications
  Changes to Federal Requirements
  Termination Provisions (Contracts exceeding $10,000)
  Civil Rights Requirements
  Requirements for Disadvantaged Business Enterprises (DBEs)
  Incorporation of FTA Terms

Requirements for Contracts Exceeding $25,000 Threshold:
  Debarment and Suspension Requirements

Requirements for Contracts Exceeding Small Purchase Threshold
($100,000):
  Report, record retention, and access provisions
  Buy America requirements
  Provisions For Resolution Of Disputes, Breaches, Defaults Or Other Litigation
  Lobbying Requirements
  Bonding Requirements for Construction Activities; (may be imposed for
  nonconstruction activities)
  Clean Water Requirements
  Clean Air Requirements

Cargo Preference
  Acquisition of Property Shipped by Ocean Vessel
  Acquisition of Property Shipped by Air (Fly America)

Planning, Research, Development and Demonstration Projects
  Patent Rights Requirements
  Rights in data and copyrights requirements

Miscellaneous Special Requirements
  Environmental Protection
  Energy Conservation Requirements
  Metric System Requirements
  National ITS Architecture
  Requirements for Recycled Products (for items designated by EPA)
  Seat Belt Use
  Text Messaging While Driving
Certifications
  Buy America
  Lobbying

Protest Procedures For Federal Transit Administration Funded Projects

City Of Tucson Protest Procedures For Federal Transit Administration (FTA) Funded Projects
Requirements/Conditions For All FTA Assisted Contracts
This Contract is Subject to Federal Financial Assistance/Application of Provisions and Clauses

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

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

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

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

Federal Disclaimer to Third Parties

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.


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.

Access to Third Party Contract Records (Form FTA Master Agreement MA (18) dated October 1, 2011)

All contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). All contractors further agree to require its third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

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

1. Apart from inconsistent requirements imposed by Federal laws or regulations, the City of Tucson agrees that it will comply with 49 U.S.C. § 5325 (h) by not expending or otherwise using any Federal assistance FTA has made available for the Project to support a procurement using exclusionary or discriminatory specifications.

Changes to Federal Requirements - 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 (18) dated October, 2011 between the City of Tucson and FTA), as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract. All standards or limits set forth in this Contract to be observed in the performance of the work are minimum requirements, unless modified by the FTA.

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

1. Termination for Convenience (General Provision): The City Of Tucson may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City Of Tucson to be paid the Contractor. If the Contractor has any property in
its possession belonging to the City Of Tucson, the Contractor will account for the same, and dispose of it in the manner the City Of Tucson directs.

2. **Termination for Default [Breach or Cause] (General Provision):** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City Of Tucson may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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

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

4. **Waiver of Remedies for any Breach:** In the event that the City of Tucson elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City of Tucson shall not limit the City of Tucson's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

5. **Termination for Convenience (Professional or Transit Service Contracts):** The City of Tucson, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the City of Tucson shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

6. **Termination for Default (Supplies and Service):** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Tucson may terminate this contract for default. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Tucson.
7. Termination for Default (Transportation Services): If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City of Tucson may terminate this contract for default. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

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

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

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

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

a. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the City of Tucson, acts of another Contractor in the performance of a contract with the City of Tucson, epidemics, quarantine restrictions, strikes, freight embargoes; and

b. the contractor, within ten [10] days from the beginning of any delay, notifies the City of Tucson in writing of the causes of delay. If in the judgment of the City of Tucson, the delay is excusable, the time for completing the work shall be extended. The judgment of the City of Tucson shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor’s right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City of Tucson.
9. **Termination for Convenience or Default (Architect and Engineering):** The City of Tucson may terminate this contract in whole or in part, for the City of Tucson's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City of Tucson shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

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

If the termination is for failure of the Contractor to fulfill the contract obligations, the City of Tucson may complete the work by contact 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 or 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.


The Contractor agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a. **Nondiscrimination in Federal Public Transportation Programs:** The Contractor agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor,
or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, age or disability and prohibits discrimination in employment or business opportunity.

b. **Nondiscrimination – Title VI of the Civil Rights Act:** 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 to comply, and assures compliance of each of each subcontractor at any tier of the Project, with all provisions prohibiting discrimination 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.

c. **Equal Employment Opportunity.** The Contractor agrees to comply, and assures the compliance of each subcontractor at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Contractor also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General. 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. 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, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.


**Requirements for Disadvantaged Business Enterprises (DBE’s) - 49 CFR Part 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 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 Legal Documents and Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, the City Of Tucson may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

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

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

b. DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 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.

3. Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment made by the City of Tucson to the prime contractor. If applicable, the Prime contractor is to pay all retainage owed to the DBE subcontractor within 30 days of satisfactory completion of the contracted work. For the purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented by the prime contractor as required by the City of Tucson. The City of Tucson will continue to hold full retainage as provided for under the Arizona Revised Statutes. Prime contractors must provide notice to DBE firms that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson Office of Equal Opportunity Programs Director, 201 N. Stone Ave., 3rd Floor NW, Tucson Arizona 85701. The complaint shall set forth the facts and identify the prime contractor and the project.

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

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of the City Of Tucson's requests which would cause the City Of Tucson to be in violation of the FTA terms and conditions.
Requirements for Contracts Exceeding $25,000
Debarment and Suspension Requirements - 49 CFR Part 29, Executive Order 12549

Debarment, Suspension, and Other Responsibility Matters - (Third Party Contracts over $25,000).

The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management FTA Master Agreement MA(16), 10-1-2009 17 and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. The Recipient agrees to, and assures that its subrecipients, lessees, third party contractors, and other participants at any tier of the Project will, review the "Excluded Parties Listing System" at http://epis.gov/ before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project.
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

Record Retention

During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, subagreements, leases, third party contracts, and supporting materials related to the Project as the Federal Government may require.

Access to Records of Recipients and Subrecipients

The Recipient agrees to permit, and require its subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its subrecipients pertaining to the Project, as required by 49 U.S.C. § 5325(g), 18 CFR 18.36(i), 49 CFR 633.17


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

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

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

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

Disputes

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

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

Claims for Damages

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


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 for

Bid Bond Requirements (Construction)
Performance and Payment Bonding Requirements (Construction)
Performance and Payment Bonding Requirements (Non-Construction)
Advance Payment Bonding Requirements
Patent Infringement Bonding Requirements (Patent Indemnity)
Warranty of the Work and Maintenance Bonds

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

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

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

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

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

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

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

The contractor agrees to:

a. use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b. furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)

c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Acquisition of Property Shipped by Air (Fly America):

Fly America Requirements - The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.
Planning, Research, Development and Demonstration Projects
Patent And Rights In Data - 37 CFR Part 401, 49 CFR Parts 18 and 19

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

a. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course...
of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

d. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

f. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

g. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

3. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

4. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
B. Patent Rights - This following requirements apply to each contract involving experimental, developmental, or research work:

1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
Miscellaneous Special Requirements

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.

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

National ITS Architecture

Recycled Products (for items designated by the EPA)
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.

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

Text Messaging While Driving
In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3602.10, Text Messaging While December 30, 2009, the contractor is encouraged to comply with the terms of the following Special Provision.

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

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

b. Safety. The Grantee is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving-
   (a) Grantee-owned or Grantee-rented vehicles or Government-owned, leased or rented vehicles;
   (b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
   (c) Any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the Grantee's size, such as:
   (a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
   (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision, and include this Special Condition in each subagreement, lease, and third party contract at each tier financed with Federal assistance provided by the Federal Government.
BUY AMERICA CERTIFICATION
CERTIFICATION FOR PROCUREMENT OF STEEL OR MANUFACTURED
PRODUCTS
(To be submitted with each bid or offer exceeding $100,000)
(To be signed and submitted by the bidder/offeror)

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

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

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

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

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

Date

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)
(To be signed and submitted by the bidder/offoror)


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)
(To be submitted by the bidder/offeree)

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 protest 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/offerees, and may also include a subcontractor or supplier provided they have a substantial economic interest in a portion of the IFB or RFP.

6. The Procurement Director shall respond "in writing", in detail, to each substantial issue raised in the protest. The Procurement Director has the sole authority to make determinations for the City, and a determination shall be considered final when it is labeled as such. A request for reconsideration will be allowed by the Procurement Director if he determines that data has become available that was not previously known, or that there has been an error of law or regulation.
7. The City may proceed with a procurement when a protest is pending if the City determines that:

A. The items to be procured are urgently required;

B. Delivery or performance will be unduly delayed by failure to make the award promptly; or

C. Failure to make award will otherwise cause undue harm to the grantee for the Federal Government.

8. FTA will only entertain a protest that alleges:

1. The City failed to have or to adhere to its protest procedures, or failed to review a complaint or protest; or

2. Violations of Federal law or regulation.

A protest to FTA must be filed in accordance with FTA Circular 4220.1F, available from the Contract Officer. Specifically, protesters shall file a protest with FTA Region 9 or FTA Headquarters Office no later than five (5) days after a final decision is rendered under the City’s protest procedure. In instances where the protestor alleges that the City failed to make a final determination on the protest, protesters shall file a protest with FTA not later than five (5) calendar days after the protestor 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.
RFQ 141065

APPENDIX D – HUD REQUIREMENTS
Section 3 Requirements
HUD 5369-B
HUD 5369-C
HUD 5370-C
SECTION 3 RESIDENTS AND BUSINESS CONCERNS

Section 3 Residents Are:
1. Residents of Public and Indian Housing; or

2. Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

Section 3 Business Concerns Are One of the Following:
1. Businesses that are 51 percent or more owned by Section 3 residents;

2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or

3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

In accordance with the regulation, residents and businesses concerns seeking Section 3 preference shall certify, or submit evidence to the recipient, contractor, subcontractor or subrecipient (if requested) verifying that they meet the definitions provided above.

INCOME LIMITS

New Income Limits for Tucson and Pima County were issued December 18, 2013. The Area Median Family Income is $56,300. The following Income Limits are effective December 18, 2013.

<table>
<thead>
<tr>
<th>FY 2014 Income Limit Area</th>
<th>Median Income</th>
<th>FY 2014 Income Limit Category</th>
<th>Persons in Household</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Pima County</td>
<td>$56,300</td>
<td>Very Low (50%) Income Limits ($)</td>
<td>19,950</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Extremely Low (30%) Income Limits ($)</td>
<td>12,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Low (80%) Income Limits ($)</td>
<td>31,950</td>
</tr>
</tbody>
</table>

For families with more than 8 persons, please contact the City at 837-5333 for assistance in calculating the appropriate income limits.
CITY OF TUCSON

SECTION 3 OPPORTUNITIES PLAN
STATEMENT OF INTENT TO FULFILL OBLIGATION

PROJECT: ____________________________________________

CONTRACT #: _______________________________________

CONTRACTOR NAME: __________________________________

OPPORTUNITIES PLAN

☐ The Contractor has identified ________ employment opportunities during the term of the contract (if no opportunities have been identified, enter 0). The Contractor affirms that the jobs identified shall be for meaningful employment that may or may not be related to the scope of work of this Contract.

☐ The Contractor has identified ________ subcontracting opportunities.

☐ The Contractor qualifies as a Section 3 Business Enterprise. (See section below)

Please select “Yes” or “No”. If you answer “YES” to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. 51% or more of the business is owned by Section 3 Resident; or
   _______YES   _______NO

2. 30% or more of the company’s full-time employees are Section 3 Residents, or were Section 3 Residents within the past three years; or
   _______YES   _______NO

3. The company can provide evidence, as required, of a commitment to subcontract 25% or more of all subcontract dollars to a certified and qualified Section 3 Business Enterprises.
   _______YES   _______NO

Contractor’s Signature: _______________________________________

Title: ________________________________________ Date: ____________

COT Sec. 3 Intent (4/2011)
CITY OF TUCSON

INDIVIDUAL CERTIFICATION
FOR
SECTION 3 RESIDENT ELIGIBILITY

This form is to be used by individual persons requesting to be certified by the City of Tucson as a Section 3 Resident for purposes of Section 3 employment opportunities on HUD-funded construction projects.

Project: ____________________________  Contract #: __________________

Contractor Name: ____________________________

Job Title: ____________________________  Hire Date: ________________

Name: ____________________________  Phone Number: __________________

Physical Address: ____________________________

(No P.O. Box Addresses)

City State Zip: ____________________________  Email Address: __________________

Please complete Part A (Household Size and Income) OR Part B (Public Housing Resident)

A. Household Size and Income
My household size (total persons in household) is: ____________________________
My total annual household income is: ____________________________
My total current monthly household income is: ____________________________

B. Public Housing Resident
I currently receive the following housing assistance: ____________________________
Check box:  □ Public Housing  □ Section 8 (Housing Choice Voucher)

City Use Only

Income at/below: ____________________________
Verified: _______  Date: ________________

Public Housing Resident/ Sec. 8/HCV Participant: ____________________________
Verified: _______  Date: ________________

Certification

I hereby certify, under penalty of perjury, that all of the information provided above is true and correct. I agree to provide acceptable documentation, if requested, that confirms the accuracy of my residency, household size, income, and employment.

Employee Name (Print): ____________________________  Date: ________________

Employee Signature: ____________________________

COT Sec. 3 Ind (4/2011)
CITY OF TUCSON

SECTION 3 ELIGIBLE BUSINESS CERTIFICATION

Instructions
To be considered for certification as a Section 3 Business Concern, a business must complete this form and provide all required supporting documentation. An Individual Certification for Section 3 Resident Eligibility Form must be completed and signed by each Section 3 Resident owner or employee certifying that each individual meets the HUD definition of a Section 3 Resident.

BUSINESS LEGAL STATUS

<table>
<thead>
<tr>
<th>Business Name:</th>
<th>Phone:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>Fax:</td>
</tr>
<tr>
<td>City:</td>
<td>State:</td>
</tr>
<tr>
<td>Email Address:</td>
<td></td>
</tr>
</tbody>
</table>

- [ ] Sole Proprietor
- [ ] Corporation
- [ ] Partnership
- [ ] Limited Liability

Date Business Established: ____________________________
Federal Tax ID or Social Security Number: ____________________________

Total Number of Employees: __________
*Number of Section 3 Employees: ______
Percentage of Section 3 Employees: ______ %

*Must provide completed Individual Certification forms for each employee

Please select “Yes” or “No”. If you answer “YES” to one or more of the following questions, you may designate your company as a Section 3 Business Enterprise.

1. 51% or more of the business is owned by Section 3 Resident; or ______ YES ______ NO
2. 30% or more of the company’s full-time employees are Section 3 Residents, or were Section 3 Residents within the past three years; or ______ YES ______ NO
3. The company can provide evidence, as required, of a commitment to subcontract 25% or more of all subcontract dollars to a certified and qualified Section 3 Business Enterprises. ______ YES ______ NO

A Section 3 Resident is a public housing resident or an individual who resides in the covered metropolitan area and is a low income person as identified by HUD, (see certification instructions for HUD definitions and income limits).

Owner’ Name (printed): ____________________________
Title: ____________________________

Signature: ____________________________
Date: ____________________________

COT Sec. 3 Bus (4/2011)
1. Preparation of Offers
(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type his name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers
(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations
(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by:
   (1) signing and returning the amendment;
   (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
   (3) letter or telegram, or
   (4) facsimile, if facsimile offers are authorized in the solicitation.

   The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors
Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing within a reasonable time and provide the address of the offeror. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor
(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must:  
   (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

   (2) Have a satisfactory performance record;
   (3) Have a satisfactory record of integrity and business ethics;
   (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
   (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers
(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:
   (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
   (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/HUD that the late receipt was due solely to mishandling by the HA/HUD after receipt at the HA;
   (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 3:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
   (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation built-in postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.
(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including telexgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award
(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may
   (1) reject any or all offers if such action is in the HA's interest,
   (2) accept other than the lowest offer,
   (3) waive informalities and minor irregularities in offers received, and
   (4) award more than one contract for all or any part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest
Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission
Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here]
1. Contingent Fee Representation and Agreement
(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

(1) has, has not employed or retained any person or company to solicit or obtain this contract; and

(2) has, has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

2. Small, Minority, Women-Owned Business Concern Representation
The bidder/offeror represents and certifies as part of its bid/offer that:

(a) is, is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) is, is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) is, is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

3. Certificate of Independent Price Determination
(a) The bidder/offeror certifies that—

(1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that at the time of the bid:

(1) Is the person in the bidder/offeror’s organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) above (insert full name of person(s) in the bidder/offeror’s organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror’s organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and
(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(i) through (a)(3) above.

(c) If the bidder/offeree deletes or modifies subparagraph (a)(2) above, the bidder/offeree must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor's objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)
The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Signature & Date:

Typed or Printed Name:

Title:
General Conditions for Non-Construction Contracts
Section I – (With or without Maintenance Work)

Applicability. This form HUD-6370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

1) Non-construction contracts (without maintenance) greater than $100,000 - use Section I.
2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 966.105) greater than $2,000 but not more than $100,000 - use Section II;
3) Maintenance contracts (including nonroutine maintenance), greater than $100,000 – use Sections I and II.

Section I - Clauses for All Non-Construction Contracts greater than $100,000

1. Definitions

The following definitions are applicable to this contract:
(a) "Authority or Housing Authority (HA)" means the Housing Authority.
(b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of these documents by addendum, Change Order, or other modification.
(c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
(d) "Day" means calendar days, unless otherwise stated.
(e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

(a) The HA may at any time, by written order, and without notice to the contractors, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
(b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
(c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a proposal submitted before final payment of the contract.
(d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
(e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

(a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
(b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
(c) If the termination is for the default of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of offset or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
(d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
(e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

(a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making an audit, examination, excerpt, and transcriptions.
(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:

(i) appeals under the clause titled Disputes;
(ii) litigation or settlement of claims arising from the performance of this contract; or,
(iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

(a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach thereof of which are not disposed of by agreement, shall be resolved under this clause.

(b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.

(c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.

(d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.

(e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract, except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:

(i) Award of the contract may result in an unfair competitive advantage; or
(ii) The Contractor's objectivity in performing the contract work may be impaired.

(b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.

(d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

(a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any
product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

(b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date at the HA’s discretion.

(c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor’s submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other person related to the locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

(i) The awarding of any Federal contract;
(ii) The making of any Federal grant;
(iii) The making of any Federal loan;
(iv) The entering into of any cooperative agreement; and,
(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). Alaskan Natives are included under the definition of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before 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 any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an Intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

(i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
(ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
(iii) A special Government employee as defined in section 202, title 18, U.S.C.;
(iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. The term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such a contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or Instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

(i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with any of the following covered Federal actions: 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.

(ii) The prohibition does not apply as follows:
(1) Agency and legislative liaison by Own Employees.
   (a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.
   (b) For purposes of paragraph (b)(ii)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
   (c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:
      (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,
      (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
   (d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:
      (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
      (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
      (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
   (e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.
   (2) Professional and technical services.
   (a) The prohibition on the use of appropriated funds, in subparagraph (b)(ii) of this clause, does not apply in the case of:
      (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
      (ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
   (b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.
   (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, and reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
   (d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(ii) Selling activities by Independent sales representatives.
   (c) The prohibition on the use of appropriated funds, in subparagraph (b)(ii) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:
      (i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and
      (ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
   (d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.
16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.

(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heading any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of
apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.