

**CITY OF PHOENIX, ARIZONA
OFFICE OF THE CITY ENGINEER
DESIGN AND CONSTRUCTION PROCUREMENT**



PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS

FY2022 CMAQ ALLEY DUSTPROOFING

**PROJECT NO. ST87400405
FEDERAL AID NO. PHX-0(372)D
ADOT TRACS NO. T039701C**

**PROCUREPHX PRODUCT CATEGORY CODE 912000000
RFx 6000001622**

AGREEMENT _____

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CALL FOR BIDS

**CITY OF PHOENIX
FY 2022 CMAQ ALLEY DUSTPROOFING
DESIGN-BID-BUILD**

**PROJECT NO. ST87400405
FEDERAL AID NO. PHX-0(372)D
ADOT TRACS NO. T039701C**

**PROCUREPHX PRODUCT CATEGORY CODE 91200000
RFx 6000001622**

**BIDS WILL BE DUE: TUESDAY, JULY 16, 2024 AT 2:00 P.M.
SUBMITTED INTO THE DESIGN AND CONSTRUCTION PROCUREMENT BID BOX
LOCATED ON THE 1ST FLOOR LOBBY OF THE PHOENIX CITY HALL BUILDING,
200 W. WASHINGTON STREET, PHOENIX, ARIZONA, 85003**

**BIDS WILL BE READ: TUESDAY, JULY 16, 2024 AT 2:00 P.M.
ON 5TH FLOOR, ROOM 5 WEST
PHOENIX CITY HALL
200 W. WASHINGTON STREET
PHOENIX, AZ 85003-1611**

***All times are local Phoenix time**

SCOPE OF WORK

The City of Phoenix is seeking a qualified contractor to provide construction services for the project listed below.

The FY 2022 CMAQ Alley Dustproofing project work will include approximately 193,000 square yards of clearing, grubbing, and subgrade preparation, including removal, hauling, and disposal of deleterious materials and degraded asphalt millings; 474 tons of single application of Liquid Asphalt (MC-250) & pre-coated fractured aggregate; weed control; and other miscellaneous items in various alleys within the City of Phoenix.

This is a federal-aid project; however, the prevailing basic hourly wage rates and fringe benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act, are not applicable.

This project will utilize federal funds and is subject to the requirements of 49 Code of Federal Regulations Part 26 and the U.S. Department of Transportation DBE Program.

A Disadvantaged Business Enterprise goal of 0 percent has been established for this project.

The City of Phoenix, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

PRE-BID MEETING

A pre-bid meeting will be held on Friday, June 28, 2024, at 9:00 a.m., at 200 W. Washington Street, City Hall, 5th floor, Conference Room 5 West and via Teams. At this meeting, staff will discuss the scope of work, general contract issues and respond to questions from the attendees. As City staff will not be available to respond to individual inquiries regarding the project scope outside of this pre-bid meeting, it is strongly recommended that interested firms send a representative to the pre-bid meeting.

Pre-Bid Teams Meeting Information:

Join on your computer, mobile app or room device

Click here to [Join the meeting now](#)

Meeting ID: 242 334 518 82

Passcode: NPygMJ

REQUEST FOR BID PACKET

On Thursday, June 20, 2024, the bid packet may be downloaded from the City of Phoenix's eProcurement site at:

<https://eprocurement.phoenix.gov/irj/portal>

(OR)

the City of Phoenix's "Solicitations" web page as. The web address is:

<https://solicitations.phoenix.gov>

Firms receiving a copy of the bid packet through any other means are strongly encouraged to download the bid packet from the City webpage.

Firms must be registered in eProcurement <https://www.phoenix.gov/finance/vendorsreg> as a vendor.

GENERAL INFORMATION

The City reserves the right to award the contract to the lowest responsible responsive bidder or all bids will be rejected, as soon as practicable after the date of opening bids.

The City of Phoenix will provide reasonable accommodations for alternate formats of the bid packet by calling Kathleen Kennedy at (602) 534-5789 or calling TTY 711. Requests will only be honored if made within the first week of the advertising period. Please allow a minimum of seven calendar days for production.

Questions pertaining to process or contract issues should be directed to Kathleen Kennedy at (602) 534-5789 or kathleen.kennedy@phoenix.gov.

Jeffrey Barton
City Manager

Eric J. Froberg, PE
City Engineer

INFORMATION FOR BIDDERS

1. **102 BIDDING REQUIREMENTS AND CONDITIONS**, Add the following to **MAG and COP Supplement to MAG Section 102 BIDDING REQUIREMENTS AND CONDITIONS**:

INFORMATION FOR BIDDERS

A. **QUESTIONS ON PLANS AND SPECIFICATIONS**

Neither the Engineer nor the City of Phoenix shall be held responsible for any oral instructions. Any changes to the plans and specifications will be in the form of an addendum. All Addenda will be posted online within the project folder at the following website:

<https://eprocurement.phoenix.gov/irj/portal>

OR

<https://solicitations.phoenix.gov>

For additional information prior to submitting your bid, contact:

Plans, Technical/Special Provisions, Proposal or Specifications:

NAME: Kathleen Kennedy, Design and Construction Procurement

ADDRESS: 200 W. Washington Street, 5th Floor, Phoenix, AZ 85003-1611

PHONE: (602) 534-5789 E-MAIL: kathleen.kennedy@phoenix.gov

DBE Utilization contact:

Equal Opportunity Department: (602) 262-6790

All questions regarding the plans and specifications must be received (in writing) at a minimum seven calendar days prior to bid opening. Questions received after that time may not be given any consideration.

B. **REQUEST FOR SUBSTITUTIONS**

Paragraph A, B, and C of MAG Section 106.4 are deleted and the following paragraphs substituted:

1. The Engineer will consider written request(s), by a prime bidder only, for substitution(s) which is/are considered equivalent to the item(s) specified in the Contract documents. The written request will be considered only if it is received at least twelve calendar days prior to the established bid date. Notification of acceptable substitutions will be made by addendum issued no fewer than seven calendar days prior to the established bid date. (A.R.S. 34-104)
2. The prime bidder, at his own expense, shall furnish the necessary data of substitution and validate that the physical, chemical, and operational qualities of each substitute item is such that this item will fulfill the originally specified required function.
3. The substitution, if approved, will be authorized by a written addendum to the Contract documents and will be made available to all bidders. The bid date and the scheduled completion time will not be affected by any circumstances developing from this substitution.

4. The request will be submitted to Design and Construction Procurement, Attention Kathleen Kennedy, 5th floor, Phoenix City Hall, 200 W. Washington Street, Phoenix, Arizona 85003-1611 or via email to kathleen.kennedy@phoenix.gov.

C. **BID BOND**

Bidders must submit a properly completed proposal guarantee in the form of certified check, cashier's check, or surety bond on the form provided, for an amount not less than ten percent of the total amount bid included in the proposal as a guarantee that the contractor will enter into a contract to perform the proposal in accordance with the plans and specifications. Surety bonds submitted for this project shall be provided by a company which has been rated "A- or better for the prior four quarters" by the A.M. Best Company. ***A bid will be deemed non-responsive if not accompanied by this guarantee.***

The surety bond shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona, issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1. The surety bond shall not be executed by an individual surety or sureties even if the requirements of Section 7-101 are satisfied. The certified check, cashiers check, or surety bond will be returned to the contractors whose proposals are not accepted, and to the successful contractor upon the execution of a satisfactory bond and contract.

When providing a Surety Bond, ***failure to provide an "A- or better for the prior four quarters" bond will result in bid rejection.***

D. **LIST OF MAJOR SUBCONTRACTORS AND SUPPLIERS & LIST OF ALL SUBCONTRACTORS AND SUPPLIERS**

A bid will be deemed non-responsive if not accompanied by a properly completed and signed L.O.S.-1 "List of Major Subcontractors and Suppliers" form.

To assist in eliminating the practice of bid shopping on City construction projects, the Bidder shall list all Major Subcontractors and Suppliers to whom the Bidder intends to contract with that are equal to or greater than 5% of the base bid. The list of Major Subcontractors and Suppliers will be provided on the L.O.S.-1 "List of Major Subcontractors" form. Failure to properly complete and sign this form will result in bid rejection. This form is due with the bid.

If substantial evidence exists that bid shopping occurred on this project, the Bidder will be ineligible to bid on City or City-affiliated construction projects for a period of one year.

The list of All Subcontractors and Suppliers shall be provided on the L.O.S.-2 "List of All Subcontractors and Suppliers" form. This form is due five calendar days after bid opening by 4:00 p.m. All bidders will be required to submit the L.O.S.-1 form. The three lowest bidders will be required to submit the L.O.S.-2 form. If the L.O.S.-2 form is not submitted by the post-bid deadline, the Bidder will still be required to submit the document prior to award. If the Bidder fails to submit the required L.O.S.-2 form by the post-bid deadline, the Bidder's bid bond may be placed in jeopardy because the City may make a claim against the Bidder's bid bond for the cost difference between the lowest responsive and responsible Bidder's bid and the next lowest bid (and any additional costs involved in awarding the contract to the next lowest responsive and responsible bidder).

E. **BID SUBMITTAL**

The properly completed bid documents along with the ten percent bid guarantee shall be submitted in a sealed envelope. The outside of the envelope shall be marked as follows:

Bid of (Firm's Name, Address and Phone Number)

For: FY 2022 CMAQ Alley Dustproofing
City of Phoenix Project Number: ST87400405
Federal Aid Project Number: PHX-0(372)D
ADOT TRACS Number: T039701C

Sealed bids will be submitted to the bid box located on the first floor of the Phoenix City Hall Building, 200 W. Washington Street, Phoenix, Arizona, 85003 prior to the time and date specified for bid opening.

F. **BID WITHDRAWALS**

MAG Section 102-10, Withdrawal or Revision of Proposal, is hereby deleted and the following paragraph is submitted:

“No bidder may withdraw or revise a proposal after it has been deposited with the City except as provided in Phoenix City Code Chapter 2, Section 190.2. Proposals, read or unread, will not be returned to the bidders until after determination of award has been made.

G. **ADDENDA**

Acknowledge all addenda; a bid will be deemed non-responsive if all issued addenda for this project are not acknowledged in writing on Page P. -1.

The City of Phoenix shall not be responsible for any oral responses or instructions made by any employees or officers of the City of Phoenix regarding bidding instructions, plans, drawings, specifications or contract documents. A verbal reply to an inquiry does not constitute a modification of the Invitation for Bid. Any changes to the plans, drawings and specifications will be in the form of an addendum.

It shall be the responsibility of the prospective bidder to determine, prior to the submittal of its bid, if any addenda to the project have been issued by Design and Construction Procurement. All addenda issued shall be acknowledged by the bidder on Page P-1. All addenda (if any) will be available online within each project’s folder at the following website:

<https://solicitations.phoenix.gov>

The contractors and/or consultants are responsible for ensuring they have all addenda and/or notifications for all projects they are submitting on. Prospective bidders are strongly encouraged to check the Design and Construction Procurement website to ascertain if any addenda have been issued for the project.

H. **BID SUBMITTAL CHECKLIST**

All firms must be registered in the City’s Vendor Management System prior to submitting a bid. For new firms – the City will send an email to your firm with a vendor number within two days of submitting the request. The vendor number needs to be included on the cover of the bid proposal package/envelope. Information on how to register with the City is available at:

<https://www.phoenix.gov/finance/vendorsreg>

BID SUBMITTAL CHECKLIST

This checklist is provided to remind bidders of several of the required elements of the bid

packages. It is not intended to be a comprehensive list of all of the contract documents. Bidders are encouraged to review all of the Bid Instructions to determine compliance therein.

- Acknowledge all addenda? (Page P.-1)
- Completed all of the Bid Proposal forms? (Pages P-1 to P-3 and P.S.-1)
- Included your Bid Bond (rated A- or better for the prior four quarters) or Guarantee Cashier's Check? (Page S.B.-1)
- Completed ADOT DBE Assurance Form 3102C
- Completed Certification with Regard to Equal Opportunity Clause for Contractor and Subcontractors (E.O.C.-1)
- Completed List of Major Subcontractors and Suppliers form? (Page L.O.S.-1)
- Buy American Certificate? (Page B.A.C.-1)
- No Collusion Affidavit? (Page N.C.A.-1)

PLEASE DO NOT SUBMIT THE ENTIRE SPECIFICATION BOOK WHEN SUBMITTING YOUR BID. INCLUDE ONLY THE REQUIRED BIDDING DOCUMENTS.

POST-BID SUBMITTAL CHECKLIST

The three lowest bidders must submit completed contracts documents listed below, no later than five calendar days after bid opening by 4:00 p.m. The documents must be submitted to Design and Construction Procurement, 5th Floor, or can be sent by email to kathleen.kennedy@phoenix.gov.

- **All Bidders** – ADOT DBE Intended Participation Affidavit: Individual Form 3105C
- **All Bidders** – ADOT DBE Intended Participation Affidavit Summary for Prime Form 3106C
- Completed List of All Subcontractors and Suppliers form (L.O.S.-2)
- Bidders Disclosure Statement (Pages B.D.S.-1 to 4)
- Submit Affidavit of Identity (if you are a sole proprietor) (Page A.O.I.-1)

PRIOR TO CONTRACT EXECUTION

- Contractor must provide proof of license required to perform the work.
- Verification of Experience Modification Rate (EMR) – the awarded company will be required to provide an EMR verification letter from the insurance company prior to contract execution.

***ALL DOCUMENTS NOTED AS REQUIRED IN SUBCONTRACTS MUST BE INCLUDED IN EVERY SUBCONTRACT THAT IS UPLOADED INTO THE B2G SYSTEM.**

I. **WAGE DETERMINATION**

This is a Federal-aid project, however, as this project is not located on the Federal-aid highway system, the prevailing basic hourly wage rates and fringe benefit payments, as

determined by the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act are not applicable.

K. **DBE PARTICIPATION**

See EPRISE LPA Sub-Recipient with Goal and ADOT Contractor Compliance Agreement Assurances sections.

L. **BUSINESS AND OPERATION LICENSES, PERMITS AND CERTIFICATIONS REQUIRED** It

is the responsibility of the bidder to determine whether it has the appropriate contracting licenses to perform the work. The City will make the award, if any, to the lowest responsive, responsible bidder who has the proper licenses. For all projects except Federal-aid funded projects, the bidder must have the proper licenses at the time the bid is submitted to the City. On Federal-aid funded projects, the bidder is not required to have the licenses at the time of bidding, but it must procure the licenses before award can be made, and no later than 60 days after the date bids are opened. Licensing information is available from the Arizona Registrar of Contractors.

Prior to award of the contract, the successful bidder must provide Design and Construction Procurement its Contractor's License Classification and number, its City of Phoenix Privilege License number and Federal Tax Identification number. Bidder shall submit the Bidder's Disclosure Statement as set forth in Pages B.D.S. - 1 to D.S. - 4 within five calendar days of bid opening by 4:00 p.m. Bidder will be deemed non-responsive and the bid rejected if Bidder fails to submit a substantially completed Bidder's Disclosure Statement as specified above.

M. **TAX LIABILITIES; DISCLOSURE OF CONVICTIONS AND BREACH(ES) OF CONTRACT** On

or before the award of the contract for this project, the successful bidder shall: (i) file all applicable tax returns and shall make payment for all applicable State of Arizona and Maricopa County Transaction Taxes (ARS Sec. 41-1305) and City of Phoenix Privilege License Taxes (Phoenix City Code Sec.14-415); (ii) disclose any civil fines, penalties or any criminal convictions, other than for traffic related offenses, for violation of federal, state, county or city laws, rules or regulations including, but not limited to, environmental, OSHA, or labor compliance laws (collectively "Laws") by Bidder, Bidder's directors, managing members, responsible corporate officers or party who will be responsible for overseeing and administering this project (collectively "Bidder"); and (iii) disclose any material breach(s) of an agreement with the City of Phoenix, any termination for cause or any litigation involving the City of Phoenix occurring within the past three calendar years. Unless provided otherwise in this solicitation, the successful bidder shall be deemed non-responsive and the bid rejected for any of the following: (i) Bidder's civil or criminal conviction, other than for traffic related offenses, for a violation of Laws within the past three calendar years; (ii) liability or culpability resulting in payment of fines or penalties in the cumulative total amount of \$100,000 or greater for a violation of "Laws" within the past three calendar years; (iii) material breach of a City of Phoenix agreement, termination for cause or litigation with the City of Phoenix within the past three calendar years; and (iv) Bidder's failure to disclose the information as required by this provision. Further, after award of contract, in addition to any other remedy, Bidder's failure to remit proper taxes to the City of Phoenix may result in the City withholding payment pursuant to Phoenix City Charter Chapter XVIII, Section 14 until all delinquent taxes, interest, and penalties have been paid.

State and Local Transaction Privilege Taxes:

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden is on

the person who is conducting business in Arizona and the City of Phoenix. The legal liability to remit the tax is on the person conducting business in Arizona. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes.

It is the responsibility of the prospective bidder to determine any applicable taxes. The City will review the price or offer submitted and will not deduct, add or alter pricing based on taxes.

If you have questions regarding tax liability, seek advice from a tax professional prior to submitting bid. Once your bid is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability.

If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City agrees to remit any overpayments back to the City for miscalculations on taxes included in a bid price.

For purposes of A.R.S. 42-5075(P), this contract is subject to A.R.S. Title 34.

Tax Indemnification:

Contractor will, and require the same of all subcontractors, pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor will, and require the same of all subcontractors, hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

Tax Responsibility Qualification:

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest).

Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes.

Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

N. STANDARD SPECIFICATIONS AND DETAILS

Except as otherwise required in these specifications, bid preparation and construction of this project shall be in accordance with all applicable Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Uniform Standard Details, latest edition, the City of Phoenix Supplements to the MAG Uniform Standard Specifications and Details, latest edition, the City of Phoenix Traffic Signal Standard Specifications, latest edition, and the Arizona Department of Transportation (ADOT) Standard Specifications for Road and Bridge Construction, latest edition.

O. PRECEDENCE OF CONTRACT DOCUMENTS

In case of a discrepancy or conflict, the precedence of contract documents is as follows:

1. Change Orders or Supplemental Agreements
2. Addenda
3. Contract Specifications/Special Provisions/Technical Provisions
4. The Plans
5. COP Supplement to MAG Standard Specifications and Details, latest edition
6. City of Phoenix Traffic Signal Standard Specifications
7. MAG Standard Specifications and Details, latest edition
8. ADOT Standard Specifications for Roads and Bridges Construction, latest edition

The precedence of any Addenda falls within the category of which it represents.

P. CONFIDENTIALITY OF PLANS & SPECIFICATIONS

Any plans generated for this project must include the following statement in the Title Block on every page: "Per City of Phoenix City Code Chapter 2, Section 2-28, these plans are for official use only and may not be shared with others except as required to fulfill the obligations of Contractor's contract with the City of Phoenix."

Q. AUDIT AND RECORDS

Records of the Contractor's direct personnel payroll, bond expenses, and reimbursable expenses pertaining to this Project, and records of accounts between the City and Contractor shall be kept on the basis of generally accepted accounting principles and must be made available to the City and its auditors for up to five years following Final Acceptance of the Project.

The City, its authorized representative, and/or any federal agency, reserves the right to audit the Contractor's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate the Contract and any change orders.

The City reserves the right to decrease Contract price and/or payments made on this Contract and/or request reimbursement from the Contractor following final contract payment on this Contract if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data.

The Contractor shall include a similar provision in all of its Agreements with subcontractors and suppliers providing services or supplying materials under the Contract Documents to ensure that the City, its authorized representative, and/or the appropriate federal agency has access to the Subcontractor's and Supplier's records to verify the accuracy of all cost and pricing data.

The City reserves the right to decrease the Contract price and/or payments made on this Contract and/or request reimbursement from the Contractor following final contract payment on this Contract if the above provision is not included in the Subcontractor's and Supplier's contracts, and one or more Subcontractors or Suppliers refuse to allow the City to audit their records to verify the accuracy and appropriateness of cost and pricing data.

If, following an audit of this Contract, the audit discloses the Contractor has provided false, misleading or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Contract billings, the Contractor shall be liable for reimbursement of the reasonable, actual cost of the audit.

R. IMMIGRATION REFORM AND CONTROL ACT

Compliance with Federal Laws Required. Contractor understands and acknowledges the

applicability of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act to it. Contractor agrees to comply with these Federal Laws in performing under this Agreement and to permit City inspection of its personnel records to verify such compliance.

S. LEGAL WORKER REQUIREMENTS

The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:

1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.
2. A breach of a warranty under paragraph 1 shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.

T. CONTRACTOR AND SUBCONTRACTOR WORKER BACKGROUND SCREENING

For Contractor services in the right-of-way there is no background screening required.

U. LAWFUL PRESENCE REQUIREMENT

Pursuant to A.R.S. §§ 1-501 and 1-502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships or limited liability companies.

V. LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED)

If practical, the contractor shall provide an easily accessible area to serve the construction site that is dedicated to the separation, collection and storage of materials for recycling including (at a minimum) paper, glass, plastics, metals, and designate an area specifically for construction and demolition waste recycling. The contractor must provide documentation that the materials have been taken to a Maricopa County approved recycling facility.

W. CITY OF PHOENIX EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENT

1. In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.
2. Any Contractor in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability nor otherwise commit an unfair employment practice. The Contractor shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability and will adhere to a policy to pay equal compensation to men and women who

perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

If the Contractor employs more than thirty-five employees, the following language shall apply as the last paragraph to the clause above:

The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

3. *Documentation.* Contractor may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
4. *Monitoring.* The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

X. PROTEST PROCEDURES

Any bidder who has any objections to the awarding of a contract to any bidder by the City of Phoenix, pursuant to competitive bidding procedures, shall comply with Phoenix City Code Chapter 2, Section 188."

Y. DATA CONFIDENTIALITY

As used in the Contract, "data" means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the Contractor or its subcontractors in the performance of this Contract.

The parties agree that all data, regardless of form, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor or its subcontractors in connection with the Contractor's or its subcontractor's performance of this Contract is confidential and proprietary information belonging to the City.

Except as specifically provided in this Contract, the Contractor or its subcontractors shall not divulge data to any third party without prior written consent of the City. The Contractor or its subcontractors shall not use the data for any purposes except to perform the services required under this Contract. These prohibitions shall not apply to the following data provided the Contractor or its subcontractors have first given the required notice to the City:

1. Data which was known to the Contractor or its subcontractors prior to its performance under this Contract unless such data was acquired in connection with work performed for the City;
2. Data which was acquired by the Contractor or its subcontractors in its performance under this Contract and which was disclosed to the Contractor or its subcontractors by a third

party, who to the best of the Contractor's or its subcontractor's knowledge and belief, had the legal right to make such disclosure and the Contractor or its subcontractors are not otherwise required to hold such data in confidence; or

3. Data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its subcontractors are subject.

In the event the Contractor or its subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its subcontractors became privy as a result of any other contract with the City, the Contractor shall first notify the City as set forth in this section of the request or demand for the data. The Contractor or its subcontractors shall give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

The Contractor, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, the Contractor or its subcontractors shall promptly deliver, as set forth in this section, a copy of all data to the City. All data shall continue to be subject to the confidentiality agreements of this Contract.

The Contractor or its subcontractors assume all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the Contractor, its employees, agents or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section shall be deemed to cause irreparable harm that justifies injunctive relief in court. Contractor agrees that the requirements of this Section shall be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Contract without notice.

Personal Identifying Information-Data Security

Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times. At a minimum, Contractor must encrypt and/or password protects electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by Contractor or its subcontractors in connection with this Contract is believed to have been compromised, Contractor or its subcontractors shall immediately notify the Project Manager and City Engineer. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

Contractor agrees that the requirements of this Section shall be incorporated into all subcontracts entered into by Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Contract without notice.

The obligations of Contractor or its subcontractors under this Section shall survive the termination of this Contract.

Z. PROJECT MANAGEMENT INFORMATION SYSTEM (UNIFIER)

The Street Transportation Department's Design and Construction Management (DCM) Project Manager may determine that use of UNIFIER will be required during this contract. The following information provides a guideline for utilization. Any questions related to the requirements of UNIFIER should be directed to the DCM Project Manager.

1. The contractor will be required to maintain all project records in electronic format. The City provides an Application Service Provider (ASP) web-based project management database which the contractor will be required to utilize in the fulfillment of the contract requirements. Although this electronic platform does not fulfill this requirement in its entirety, the contractor will be required to utilize this platform as the basis for this work.
2. The contractor can expect to use this ASP to process all primary level tri-partite contract documents related to the design or construction phase of the Project including but not limited to: requests for interpretation/information, potential Change Orders, construction meeting minutes, Submittals, Design Professional's supplemental instructions, and Payment Requests.
3. The contractor will be required to process information into electronic digital form. In order to fulfill this requirement, the contractor shall provide all necessary equipment to perform the functions necessary to generate, convert, store, maintain, connect to web-based ASP and transfer electronic data.
4. The contractor shall provide a computerized networked office platform with broadband internet connectivity. Wired or wireless is acceptable. This platform shall function well in a web-based environment utilizing an internet browser compatible with the City UNIFIER ASP system.

AA. CONTRACTOR AND SUBCONTRACTOR RECORDS

The contractor, subcontractors and all suppliers shall keep and maintain all books, papers, records, files, accounts, reports, bid documents with backup data, including electronic data, and all other material relating to the contract and project for five years following completion and acceptance of the work.

All the above material shall be made available to the City for auditing, inspection and copying and shall be produced, upon request.

The contractor shall insert the above requirement in each subcontract, purchase order and lease agreement and shall also include in all subcontracts a clause requiring subcontractors to include the above requirement in any lower-tier subcontract, purchase order or lease agreement.

BB. FEDERAL IMMIGRATION AND NATIONALITY ACT

The contractor, including all subcontractors, shall comply with all federal, state and local immigration laws and regulations, as set forth in Arizona Executive Order 2005-30, relating to the immigration status of their employees who perform services on the contract during the duration of the contract. The Agency shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance.

By submission of a bid, the contractor warrants that the contractor and all proposed subcontractors are and shall remain in compliance with all federal, state and local immigration laws and regulations relating to the immigration status of their employees who perform services on the contract. The Agency may, at its sole discretion, require evidence of

compliance from the contractor or subcontractor. Should the Agency request evidence of compliance, the contractor or subcontractor shall have ten working days from receipt of the request to supply adequate information. The City will accept, as evidence of compliance, a showing by the contractor or subcontractor that it has followed the employment verification provisions of the Federal Immigration and Nationality Act as set forth in Sections 274A and 274B of that Act, including implementation of regulations and agreements between the Department of Homeland Security and the Social Security Administration's verification service. The contractor shall include the requirements of the provisions of ADOT Standard Specifications Subsection 107.19 In all its subcontracts.

Failure to comply with the immigration laws or to submit proof of compliance constitutes a material breach of contract. The City will reduce the contractor's compensation by \$10,000 for the initial instance of non-compliance by the contractor or a subcontractor. Should the same contractor or subcontractor commit subsequent violations within a two-year time-period from the initial violation, the contractor's compensation will be reduced by \$50,000 for each violation. The third instance by the same contractor or subcontractor within a two-year period may result, in addition to the \$50,000 reduction in compensation, in removal of the offending contractor or subcontractor, suspension of work in whole or in part or, in the case of a third violation by the contractor, termination of the contract for default. In addition, the City may debar a contractor or subcontractor who has committed three violations within a two-year period for up to one year. For purposes of this paragraph, a violation by a subcontractor does not count as a violation by the contractor.

Any delay resulting from a sanction under this subsection is a non-excusable delay. The contractor is not entitled to any compensation or extension of time for any delays or additional costs resulting from a sanction under this subsection.

CC. PROJECT STAFFING

Key Personnel: Before starting work, Contractor must submit detailed résumés of key personnel involved in that work for City's approval (which City will not unreasonably withhold). If Contractor later desires to change key personnel involved in that work, Contractor must submit detailed résumés of the new personnel for City's approval (which City will not unreasonably withhold).

Qualified Staff: Contractor must maintain an adequate and competent staff of qualified persons—as City may determine in its sole discretion—during performance of this Master Agreement. If City in its sole discretion determines that any of Contractor's staff is objectionable, Contractor must take prompt corrective action or replace that staff with new personnel, subject to City's approval.

Third-Party Employment Brokers: Contractor and Subcontractors will not utilize a third-party labor broker for any construction worker under this Agreement. The Contractor and Subcontractors must be the employers of record for its construction staff under this Agreement.

DD. NO ISRAEL BOYCOTT

If this Contract is valued at \$100,000 or more and requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Contractor must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Contractor by entering this Contract now certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services

from Israel.

EE. NO FORCED LABOR OF ETHNIC UYGHURS

If this Contract requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Contractor must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Contractor, by entering this Contract, now certifies it is not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

FF. COMPLIANCE WITH LAWS

Contractor must comply with all existing and subsequently enacted federal, state and local laws, ordinances and codes, all applicable ADA requirements, regulations that are, or become applicable to this Agreement, and be in general conformance with PROWAG guidance. If a subsequently enacted law imposes substantial additional costs on Contractor, a request for an amendment may be submitted pursuant to this Agreement. Contractor is also required to certify its compliance with all applicable laws and Contractor must pass along these requirements to its Subcontractors. If any of Contractor's certifications is found to be false, the City may terminate this Agreement or impose other remedies due to the false certification.

GG. HEAT MITIGATION

Per Phoenix City Code G-7241, effective April 25, 2024, any Contractor whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The City may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this Provision shall include each of the following as it relates to heat safety and mitigation:

1. Availability of sanitized cool drink water free of charge at locations that are accessible to all employees and contract workers.
2. Ability to take regular and necessary breaks as needed and additional breaks for hydration.
3. Access to shaded areas and/or air conditioning.
4. Access to air conditioning in vehicles with enclosed cabs. All such vehicles must contain functioning air conditioning by no later than May 1, 2025.
5. Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.
6. Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures and how to report heat illness and injury to emergency medical personnel.

The Contractor further agrees that this clause will be incorporated in all subcontracts with subconsultants, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the Contractor agrees to require all subcontractors, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the Contractor to ensure compliance by its subcontractors.

SUPPLEMENTARY CONDITIONS

1. **103 AWARD AND EXECUTION OF CONTRACT,** Add the following to **Subsection 103.3 AWARD OF CONTRACT:**

Contract award will be made to a responsive and responsible bidder based on the low total base bid or on the low combination of the total base bid and any selected alternate(s), whichever is in the best interest of the City. If unit pricing is required in the proposal, the extensions and additions will be verified to assure correctness. Award will be based on the revised total if any errors are found. Additionally, the Contractor shall comply with the DBE requirements as detailed in the DBE clause. The City expressly reserves the right to cancel this agreement without recourse or prejudice to Contractor until all parties have executed the agreement in full.

Any bidder that currently contracts with the City must be in good standing for its proposal to be considered responsive. For the purpose of this Invitation to Bid, good standing means compliance with all contractual provisions, including payment of financial obligations.

2. **103 AWARD AND EXECUTION OF CONTRACT,** Add the following to **Subsection 103.3 AWARD OF**

DELAYED NOTICE TO PROCEED

The contract execution for this project is expected to be completed by December 2024. In order to avoid unfavorable weather conditions related to the application of the Dustproofing treatment, the Contractor's Notice to Proceed (NTP) for construction may not be issued until as late as April 2025. After award of the contract, the successful bidder may request discussion with the City regarding a possible earlier start date dependent on weather conditions. The City will have the final authority to set the NTP. The Contractor's unit bid prices will take into consideration the assumption that the Notice to Proceed will not be issued until as late as April 2025 and will be considered final and accepted bid prices through the duration of the contract.

3. **103 AWARD AND EXECUTION OF CONTRACT,** Add the following to **Subsection 103.5, REQUIREMENT OF CONTRACT BONDS:**

1. **PERFORMANCE BOND AND LABOR AND MATERIAL BOND**

Prior to the execution of a contract, the successful bidder must provide a performance bond and a labor and material bond, each in an amount equal to the full amount of the contract. Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds. The Certificate shall have been issued or updated within two years prior to the execution of the Contract. The bonds shall be made payable and acceptable to the City of Phoenix. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this state, as required by law, and the bonds shall have attached thereto a certified copy of Power of Attorney of the signing official. If one Power of Attorney is submitted, it shall be for twice the total contract amount. If two Powers of Attorney are submitted, each shall be for the total contract amount. Personal or individual bonds are not acceptable. Failure to comply with these provisions will be cause for rejection of the bidder's proposal.

2. **BONDING COMPANIES**

All bonds submitted for this project shall be provided by a company which has been rated "A- or better for the prior four quarters" by the A. M. Best Company. **Failure to provide an "A- or better for the prior four quarters" bond will result in bid rejection.**

4. **103 AWARD AND EXECUTION OF CONTRACT**, Delete **Subsection 103.6, CONTRACTOR'S INSURANCE** in its entirety and substitute the following:

103.6.1 General:

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subconsultants. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees, or subcontractors and Contractor may purchase additional insurance as they determine necessary.

1. SCOPE AND LIMITS OF INSURANCE

Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a "following form" basis, and (2) all terms under each line of coverage below are met:

1. **Commercial General Liability – Occurrence Form**

Policy must include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

a. The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor, related to this Contract.

b. Coverage must include XCU coverage.

c. There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.

d. City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.

e. The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

f. Contractor's policies must be endorsed to provide an extension of the completed operations coverage for a period of nine years.

2. **Automobile Liability**

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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a. The policy must be endorsed to include The City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, related to this contract.

b. City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.

c. The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

a. Policy must contain a waiver of subrogation against the City of Phoenix.

b. This requirement does not apply when a Contractor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such Contractor or subcontractor executed the appropriate sole proprietor waiver form.

4. **No Builders' Risk Insurance required.**

2. NOTICE OF CANCELTION

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within five business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed or hand delivered to Design and Construction Procurement, 200 W. Washington Street, 5th Floor, by certified mail, return receipt requested.

3. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

4. VERIFICATION OF COVERAGE

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at

or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to Design and Construction Procurement via email at str.title34.procure@phoenix.gov. **The City project number, contract number and project description must be noted on the certificate of insurance.** The City reserves the right to require complete copies of all insurance policies required by this Contract, at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

5. SUBCONTRACTORS

Contractor's certificates shall include all subcontractors as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Contract's Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Contract.

6. APPROVAL

Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.

103.6.2 Defense and Indemnification

To the maximum extent allowed by law, including Title 34 A.R.S., Contractor ("Indemnitor") agrees to defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents and employees (and any jurisdiction or agency issuing permits for any work included in the project, and its officers, agents and employees) ("Indemnitee") from any and all claims, actions, liabilities, damages, losses or expenses, (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees, or subcontractors (Indemnitor's Agents") arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state's workers' compensation law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation, or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the City's award of this Contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor's Agents for the City of Phoenix under this Contract. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

5. 104 SCOPE OF WORK, Add the following to Section 104.1 WORK TO BE DONE:

The following environmental commitment measures are required to be followed. Refer to Environmental Clearance Letter section for additional information and guidance.

The project mitigation measures are not subject to change without written approval from ADOT Environmental Planning. The Contractor shall follow all the requirements of the permits specified herein and comply with the project special provisions, as well as the MAG Uniform Standard Specifications for Public Works, as well as all applicable local environmental requirements.

1. Project Mitigation Measures:

City of Phoenix Responsibilities

- Landscaped trees or other structures in the project area may provide habitat for active nests protected under the Migratory Bird Treaty Act. The potential for active nests is increased between February 1 and August 31 of any calendar year. Mature trees/shrubs with active nests will be avoided.
- The attached Western burrowing owl and Migratory Bird Treaty Act will be incorporated into the bid documents and provided to the contractor, subcontractors, and all field personnel at the preconstruction meeting.

Contractor Responsibilities

- To prevent the introduction of invasive species seeds, all earthmoving and hauling equipment shall be washed prior to entering the construction site and the contractor shall inspect all construction equipment and remove all attached debris, including plant parts, soil and mud, prior to the equipment entering the construction site.
- To prevent invasive species seeds from leaving the site, the contractor shall inspect all construction and hauling equipment and remove all debris, including plant parts, soil and mud, prior to leaving the construction site.
- The contractor shall maintain the work area free from weeds and intruding grasses without additional cost to the project, regardless of application of weed control substances and/or applications of pre and post emergent herbicides.
- Landscaped trees or other structures in the project area may provide habitat for active nests protected under the Migratory Bird Treaty Act. The potential for active nests is increased between February 1 and August 31 of any calendar year. Mature trees/shrubs with active nests will be avoided.
- If trees or shrubs would be impacted between February 1 and August 31 of any calendar year, or if an active bird nest is present within 30 feet of the work area, work shall cease within 30 feet and the Street Transportation Department Environmental Programs Coordinator (James Marshall, 602-534-3747) shall be notified immediately and allowed time to make appropriate arrangements.
- If burrowing owls or potentially active burrows (natural or manmade holes 3 inches in diameter or greater are observed during construction, work shall cease within 100 feet and the Office of the City Engineer Environmental Services Section shall be notified immediately and allowed time to make appropriate arrangements.
- The contractor shall post the Migratory Bird Treaty Act and Western burrowing owl flyers at the construction site at all time during construction.

- If hazardous materials are suspected or found within the project area, the contractor shall contact the City of Phoenix Engineer.

6. **104 SCOPE OF WORK**, Add the following to **Subsection 104.1.2 MAINTENANCE OF TRAFFIC**:

ADA AND ANSI ACCESS OF PREMISES DURING CONSTRUCTION

Contractor shall maintain existing ADA and ANSI accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Contractor shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

7. **104 SCOPE OF WORK**, Add the following to **Subsection 104.1.4 CLEANUP AND DUST CONTROL**:

The Contractor shall use a power pick-up broom as part of the dust control effort. No separate measurement or payment will be made for cleanup or dust control, or for providing a power pick-up broom on the job.

8. **105 CONTROL OF WORK**, Add the following to Subsection **105.1, AUTHORITY OF THE ENGINEER**:

1. CONTRACT ADMINISTRATION

The definition of "Engineer" shall read as follows:

"Engineer": All references to "Engineer" in these contract bid documents, including the MAG Specifications, shall mean City Engineer.

2. PRECONSTRUCTION CONFERENCE

After completion of the contract documents, to include bonds, insurance and signatures and prior to the commencement of any work on the project, the Street Transportation Department, DCM Division, (telephone 602-495-2050), will schedule a Pre-Construction Conference. This will be held at 1034 East Madison Street, Phoenix, Arizona.

Construction administration will be provided by City of Phoenix, Street Transportation Department, Design and Construction Management (DCM) Division.

The purpose of this conference is to establish a working relationship between the Contractor, utility firms and various City agencies. The agenda will include critical elements of the work schedule, submittal schedule, cost breakdown of major lump sum items, payment application and processing, coordination with the involved utility firms, emergency telephone numbers for all representatives involved in the course of construction and establishment of the notice to proceed date. The Contractor shall also provide copies of all purchase orders and/or contracts with DBE subcontractors and suppliers used to meet the subcontract goal programmed for this project.

Minimum attendance by the Contractor shall be a responsible company/corporate official, who is authorized to execute and sign documents on behalf of the firm, the job superintendent and the Contractor's safety officer.

3. AUTHORIZATION OF THE ENGINEER

The City may, at its discretion and without cause, order the Contractor in writing to stop and suspend work. Immediately after receiving such notice, the Contractor shall discontinue advancing the work specified under this Agreement.

Such suspension shall not exceed one hundred and eighty (180) consecutive days during the duration of the project.

The Contractor may seek an adjustment of the contract price and time, if the cost or time to perform the work has been adversely impacted by any suspension or stoppage of work by the City.

9. **105 CONTROL OF WORK,** Add the following to Subsection **105.2 PLANS AND SHOP DRAWINGS:**

The Contractor shall submit as many of the required shop drawings and product data submittals at the Pre-Construction meeting as practical and possible. All shop drawings and product data submittals shall be submitted sufficiently in advance to allow adequate time for City review(s) and approval. The Contractor shall submit early enough to allow enough time for reviews based on the assumption that a submittal may be marked "Revise and Resubmit" or "Rejected", requiring the Contractor to modify the submittal and resubmit for additional review(s) until acceptance.

A separate transmittal shall be used for each specific item type, class of material or equipment for which a submittal is required. Multiple items under one transmittal will only be allowed when the items taken together constitute a complete manufacturer's package, or are so functionally related that the entire package should be reviewed as a whole. The contractor shall submit six (6) hard copies of each shop drawing for review. **Email or FAX submittals will not be accepted.**

The Contractor shall allow up to four (4) weeks for City review for each submittal. Some submittals may be simple and straightforward and may not require the full four (4) weeks, but other more complex submittals may take the full four (4) weeks.

10. **105 CONTROL OF WORK,** Add the following to **Subsection 105.7 COOPERATION BETWEEN CONTRACTORS**

Other Contractors are expected to be working in or near the area of this contract. The Contractor shall conduct his work as specified in MAG Section 105.7.

11. **105 CONTROL OF WORK,** Delete Subsection **105.8 CONSTRUCTION STAKES, LINES AND GRADES:** and add the following:

1. SURVEY

No Survey Control is anticipated for the completion of this project. A typical section is included on these specifications. Cross slope of the alleys will vary. Contractor will be responsible for grading maintain adequate drainage in the alleys and to adjacent properties.

If required to complete additional work, the City of Phoenix Street Transportation Department, Design and Construction Management (DCM) Division will set the construction stakes establishing lines, grades, and elevations to include necessary utilities and appurtenances and shall be responsible for their conformance with plans and specifications. DCM will establish or designate a control line or benchmark of known location and elevation for use as a reference.

2. RECORD DRAWINGS

The Contractor shall maintain a record set of plans at the job site. These shall be kept legible and current and shall show all changes or work added in a contrasting, reproducible color. Two weeks prior to issuance of substantial completion, the Contractor shall submit, prior to final inspection, corrected landscape drawings showing the location of all utility services, controller, pipe, valves and wiring. The Engineer shall be the sole judge as to the acceptability of the record plans and receipt of an acceptable set is a pre-requisite for final payment.

12. 105 CONTROL OF WORK, Add the following to Subsection 105.15 ACCEPTANCE, paragraph (B) Final Acceptance:

1. SUBSTANTIAL COMPLETION

The work may be judged substantially complete when all construction, including all applicable ADA requirements, has been completed with the possible exception of final inspection punch list work. The purpose of granting or acknowledging substantial completion is to stop contract time. This is particularly important to the Contractor if contract time is exhausted or nearly so and/or punch list work is anticipated to extend beyond the allotted time. Granting of substantial completion will eliminate the possibility of incurring liquidated damages or additional liquidated damages beyond the substantial completion date, whichever case may apply.

In the event that the Engineer grants substantial completion, the Contractor shall have thirty (30) days thereafter to complete punch list work, unless additional time is granted--in writing--by the Engineer. In no case shall a Contractor be granted more than thirty (30) days to complete punch list work, unless there are extenuating circumstances such as delay in shipment of a specialized piece of equipment, labor strike, or other circumstances beyond the Contractor's control which would necessitate a further time extension.

2. PENALTY FOR FAILURE TO COMPLETE PUNCH LIST WORK WITHIN SPECIFIED TIME

In the event the Contractor fails to complete the punch list work within thirty (30) days following the contract completion date, or in the case of specialized situations within the additional time allotted by the Engineer, the Contractor may be declared in default, and the Engineer may order the work completed by others.

In the event of default, as described herein, the Engineer shall withhold from the Contractor's final payment, an amount equal to at least twice the estimated cost of the remaining work. The cost of this work completed by others will be deducted from the monies owed to the Contractor as part of the overall project.

Final Release of More Than Ninety (90) Percent of the Contract Funds: Prior to final payment and release of monies retained, the Contractor will be required to sign a claims affidavit agreeing to hold the City harmless from any and all claims arising out of the contract.

3. CONTRACT RETENTION

This project shall not be considered complete until all work has been completed, including punch list work. Under no circumstances shall a Contractor receive any portion of the legally retained progress payments until the City has granted a final acceptance and/or acknowledged substantial completion. The following conditions shall apply to each case:

1. Substantial Completion: The Engineer may reduce outstanding contract retention to not less than one (1) percent of the total contract amount, upon granting substantial completion, if the value of the punch list work is estimated to be less than one (1) percent of the total contract.

2. Project Acceptance: Project acceptance implies that all punch list work is done and the improvements have been accepted by the City. Under these conditions, the retention will be fully released to the Contractor subject only to the signing of the standard claims affidavit and hold harmless clause required for all contracts.
3. Final Release of Contract Retention and/or Release of More Than Ninety (90) Percent of the Contract Funds: Prior to final payment and release of monies retained and/or in the case of substantial completion where the Contractor has requested a reduction in contract retention, the Contractor will be required to sign a claims affidavit agreeing to hold the City harmless from any and all claims arising out of the contract.

13. 106 CONTROL OF MATERIALS: Add the following new paragraphs:

106.17 Construction Materials:

A construction material, when used on a federal-aid construction project shall comply with the requirements of Build America, Buy America (BABA) Act specified in Title IX, Subtitle A, Part 1, Sections 70901 and 70911-70918 (Pub. L. No. 117-58 §§ 70901; §§ 70911-70918) of the Infrastructure Investment and Job Act (IIJA).

A “construction material” that is permanently incorporated on the project shall include an article, material, or supply that is or consists primarily of the following:

1. Non-ferrous metals
2. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
3. Glass (including optic glass)
4. Fiber optic cable (including drop cable)
5. Optical fiber
6. Lumber
7. Engineered wood; or
8. Drywall

Items manufactured through a combination of either two or more materials listed above, or at least one of the materials listed above and a material not listed shall be considered as a manufactured product, rather than as a construction material.

Build America, Buy America provisions specified for manufactured products in Section 70912(6)(B) of the IIJA, do not apply to federal-aid construction projects per FHWA’s existing statutory requirement applicable to manufactured products. A “manufactured product” is considered to be an item that undergoes one or more manufacturing processes before the item can be used on a federal-aid construction project.

Construction materials shall not include cement and cementitious materials; bituminous materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

All construction materials shall be produced in the United States. This means, all manufacturing processes to produce the construction materials shall occur in the United States. All manufacturing processes for construction materials shall mean the final manufacturing process and the immediately preceding manufacturing stage for the construction material.

The contractor shall furnish the Engineer with Certificates of Compliance, conforming to the requirements of Subsection 106.05 of the specifications, which shall state that the construction materials incorporated in the project meet the requirements specified herein. Certificates of Compliance shall also certify that all manufacturing processes to produce construction materials occurred in the United States.

Convict-produced materials are prohibited in accordance with the requirements of 23 CFR 635.417.

14. 107 LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC, Add the following to Subsection 107.1, LAWS TO BE OBSERVED, paragraph (C):

While every effort has been made to Blue Stake all known utilities, and to research and show on the plans all existing underground utilities based on the best available information, it shall be the Contractor's responsibility to locate and pothole all existing utilities sufficiently in advance of anticipated new underground construction to identify any potential conflicts and allow reasonable time for the Engineer to determine solutions. Any claims for additional compensation or work required due to the Contractor's non-compliance with this provision shall not be considered for payment by the City.

15. 107 LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC, Add the following new paragraphs to Subsection 107.1, LAWS TO BE OBSERVED:

(A) FAIR TREATMENT OF WORKERS

The Contractor shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The Contractor shall protect and indemnify the Contracting Agency and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.

(B) DESERT TORTOISE MITIGATION

As stated in the Arizona Interagency Desert Tortoise Team (AIDTT) Management Plan (1996), if a desert tortoise is found in a project area, activities should be modified to avoid injuring or harming it. If activities cannot be modified, tortoises in harm's way should be moved in accordance with Arizona Game and Fish Department's "Guidelines for Handling Sonoran Desert Tortoises Encountered on Development Projects", revised October 23, 2007 (or the latest revision), included in these contract provisions. Taking, possession, or harassment of a desert tortoise is prohibited by State law, unless specifically authorized by Arizona Game and Fish Department.

(C) BURROWING OWLS MITIGATION – MIGRATORY BIRD TREATY ACT OF 1918

While no burrowing owls have been seen at the project site, small animal burrows likely used by rodents and cottontail rabbits are present. In the event that burrowing owls are found on the site, the project shall comply with the Migratory Bird Treaty Act of 1918 and relocate the birds prior to grading. A contact for relocation of burrowing owls is Bob Fox or Greg Clark of Wild at Heart, 31840 North 45th Street, Cave Creek, AZ 85331, 480-595-5047.

16. 107 LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC, Add the following to Subsection 107.2, PERMITS:

1. HAUL PERMIT

On any project, when the quantity of fill or excavation to be hauled exceeds 10,000 C.Y. or when the duration of the haul is for more than twenty (20) working days, the Contractor shall:

- A. Obtain approval of the proposed haul route, number of trucks, etc., by the Street Transportation Department, and then;

- B. Submit the proposed haul route plan to the Planning and Development Department and pay the appropriate plan-review fee (contact Planning and Development Department at 602-534-5933 for current plan review fee, the cost of which shall be considered incidental to the project), and after their approval;
- C. Obtain the written haul permit from the Planning and Development Department.

NOTE: Obtaining the haul permit and the approval by Street Transportation does not release the Contractor from strict compliance with MAG Subsection 108.5, Limitation of Operations.

2. STORM WATER POLLUTION PREVENTION PLAN AND AZPDES PERMIT

Any project that disturbs 1 acre or more of the ground surface requires the Contractor to obtain an AZPDES permit and prepare a SWPPP. This project does not require an AZPDES permit and SWPPP.

3. DUST PERMIT

Any project that disturbs more than 1/10 acre of soil requires an earthmoving permit from Maricopa County. Information and forms can be found at:

www.maricopa.gov/aq/divisions/permit_engineering/applications/Default.aspx

To facilitate and encourage strict compliance with the Maricopa County Air Pollution Control Regulations pertaining to fugitive dust control, the Contractor shall submit the following documentation to the Engineer at the Pre-Construction meeting prior to conducting any earth moving or dust generating activities under the Contract.

- a. Copy of a valid Maricopa County Earth Moving (Dust Control) Permit applicable to the work or services under the Contract.
- b. Copy of the Dust Control Plan applicable to the work or services under the Contract.
- c. Documentation that all of the Contractor's on-site project managers have received the Comprehensive or Basic dust control training as required by Maricopa County Rule 310 based on project disturbed acres.

For construction sites where 5-acres or more are disturbed, the Contractor shall designate and identify to the City an individual who has completed the dust control training as required for the site Dust Control Coordinator. The Dust Control Coordinator shall be present on-site all times that earth moving or dust generating activities are occurring and until all ground surfaces at the site have been stabilized.

For construction sites less than 1-acre, the Contractor shall designate an individual who has completed Basic Training to be on site at all times that earth moving or dust generating activities are occurring.

The Contractor shall notify the Engineer within twenty-four (24) hours of any inspection, Notice of Violation, or other contact by the Maricopa County Air Quality Department with it or any of its subcontractors regarding the work or services under the Contract. A copy of any written communications, notices or citations issued to Contractor or any of its subcontractors regarding the work or services under the Contract shall likewise be transmitted to the Engineer within twenty-four (24) hours.

The Contractor shall prevent any dust nuisance due to construction operations in accordance

with MAG Specifications, Section 104.1.3, Cleanup and Dust Control. The Contractor shall use a power pick-up broom as part of the dust control effort. No separate measurement or payment will be made for cleanup or dust control, or for providing a power pick-up broom on the job.

The Contractor agrees to indemnify and reimburse the City for any fine, penalty, fee or monetary sanction imposed on the City by Maricopa County arising out of, or caused by the performance of work or services under the Contract. The Contractor shall remit payment of the reimbursable sum to the City within thirty (30) days of being presented with a demand for payment from the City.

4. TEMPORARY RESTRICTION AND CLOSURE SYSTEM (TRACS) PERMIT

The Contractor shall obtain a TRACS permit for any construction that restricts access (partial or complete closures) on Major/Collector public streets, or complete closures on Local streets, sidewalks, bike lanes and alleys. The Contractor shall obtain this permit in accordance with the City of Phoenix Traffic Barricade Manual, latest edition. The Contractor shall follow all requirements of the TRACS permit during construction. The Contractor shall obtain this permit before the Notice to Proceed date. Any construction delays caused by non-compliance with the TRACS permit or the City of Phoenix Traffic Barricade Manual requirements shall be the responsibility of the Contractor.

5. DEMINIMUS DISCHARGE PERMIT

As required, if the Contractor anticipates the discharge of any amount of water from the City water or wastewater system during construction, the Contractor shall be responsible for obtaining a DeMinimus Permit from the Arizona Department of Environmental Quality (ADEQ) for any discharge that will reach "waters of the U.S.", either directly or indirectly, and complying with all requirements of that permit. This includes all compliance reporting required by the permit. No separate payment will be made for obtaining or complying with this permit.

6. OTHER PERMITS

The Contractor may be required to obtain other permits from other agencies, such as the Arizona Department of Transportation (ADOT) or the Flood Control District of Maricopa County (FCDMC) before beginning work or restricting traffic in their right-of-way. The Contractor will be required to obtain these permits and comply with their requirements.

- 17. 107 LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC, Revise the title of Subsection 107.4 ARCHAEOLOGICAL REPORTS to 107.4 ARCHAEOLOGICAL MONITORING AND DISCOVERIES, and add the following:**

If suspected archaeological materials are discovered during construction without an archaeologist present, the Contractor must stop work immediately within a 10-meter zone of the discovery, secure the area, and immediately notify the City Archaeology Office (602-495-0901). The Contractor must not recommence work in the area of discovery until directed in writing by the City Archaeology Office.

- 18. 107 LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC, Add the following to Subsection 107.11, CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES:**

1. UNDERGROUND FACILITIES

The Contractor will make whatever investigation it deems necessary to verify the location of

underground utility facilities. If such facilities are not in the location shown in the drawings, then (regardless of whether this is discovered prior to or during construction) the contractor's remedies, if any, pursuant to Art. 6.3, Chapter 2, Title 40, A.R.S. (A.R.S. 40-360.21 through 40-360.32, "Underground Facilities"), shall be the contractor's sole remedy for extra work, delays and disruption of the job, or any other claim based on the location of utility facilities. Locations of utility facilities shown on drawings furnished by the City are to be regarded as preliminary information only, subject to further investigation by the contractor. The City does not warrant the accuracy of these locations, and the contractor, by entering into this contract, expressly waives and disclaims any claim or action against the City under any theory for damages resulting from location of utility facilities.

The Contractor shall be responsible for obtaining all Blue Stake utility location information, and for performing all requirements as prescribed in A.R.S. 40-360.21 through .29, for all underground facilities, including those that have been installed on the current project, until the project is accepted by the City.

At least two (2) working days prior to commencing any excavation, the Contractor shall call the BLUE STAKE CENTER, between the hours of 7:00 a.m. and 4:30 p.m., Monday through Friday for information relative to the location of buried utilities. The number to be called is as follows:

Maricopa County (602) 263-1100

2. UTILITY-RELATED CONSTRUCTION DELAY DAMAGES CLAIM PROCEDURES

The following procedure is intended to provide a fair and impartial process for the settlement of construction delay claims associated with unknown or improperly located utility facilities.

The Contractor shall immediately notify, in writing, the Project Engineer of any potential utility-related delay claim.

The Contractor shall immediately notify the appropriate liaison of the affected utility verbally, followed by a written notification.

The Contractor shall coordinate an investigation of the situation with the affected utility and the City's Utility Coordinator. After resolution, the Contractor will provide written notification of the settlement of the claim to all affected parties. If the affected utility makes a decision to handle negotiations for a claim, their personnel will be responsible for monitoring the project and all negotiations with the Contractor regarding the claim.

The Contractor shall determine to document requirements of the affected utility for their acceptance of responsibility for the claims. The Contractor shall provide four (4) copies of the required documentation to the utility involved and two (2) copies of this documentation to the Project Engineer. The Contractor shall obtain written confirmation from the utility company involved of their documentation requirements.

19. 108 COMMENCEMENT, PROSECUTION AND PROGRESS Add the following to Subsection 108.2, SUBLETTING OF CONTRACT:

(F) PROMPT PAYMENT

1. Contractor Payment to Subcontractor or Supplier

Contractor shall pay its subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the City. The Contractor shall pay for the amount of work performed or materials supplied by each subcontractor or supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to

the Contractor shall result in a corresponding reduction to subcontractors or suppliers who have performed satisfactory work. Contractor shall pay subcontractors or suppliers the reduced retention within fourteen (14) days of the payment of the reduction of the retention to the Contractor. No Contract between Contractor and its subcontractors and suppliers may materially alter the rights of any subcontractor or supplier to receive prompt payment and retention reduction as provided herein. If the Contractor fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and Contractor agrees that the City may take such actions: (1) to hold the Contractor in default under this agreement; (2) withhold future payments including retention until proper payment has been made to subcontractors or suppliers in accordance with these provisions; (3) reject all future bids from the Contractor for a period not to exceed one year from substantial completion date of this project; or (4) terminate agreement.

2. Alternative Dispute Resolution Between Contractor and Subcontractor or Supplier

If Contractor's payment to a subcontractor or supplier is in dispute, Contractor and subcontractor or supplier agree to submit the dispute to any one of the following dispute resolution processes within fourteen (14) calendar days from the date that any party involved gives written notice to the other party(ies): (1) binding arbitration; (2) a form of alternative dispute resolution (ADR) agreeable to all parties; or (3) a City of Phoenix facilitated mediation. When disputed claim is resolved through ADR or otherwise, the Contractor and subcontractor or supplier agree to implement the resolution within seven (7) calendar days from the resolution date.

3. Inspection and Audit

Contractor, its subcontractors and suppliers shall comply with A.R.S. 35-214 and the City shall have all rights and remedies to inspect and audit the records and files of Contractor, subcontractor or supplier, as afforded the State of Arizona in accordance with the provisions of A.R.S. Section 35-214.

4. Non-Waiver

Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

5. Inclusion of provisions in Subcontracts

Contractor shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

6. No Third Party Benefits or Rights

Nothing contained in this Agreement is intended to benefit or confer any rights on any person or entity not a party to this Agreement, and no such person or entity, including but not limited to other Contractors, subcontractors or suppliers, may assert any claim, cause of action, or remedy against the City hereunder.

20. 108 COMMENCEMENT, PROSECUTION AND PROGRESS, Add the following to Subsection 108.4, CONTRACTOR'S CONSTRUCTION SCHEDULE:

No later than one (1) week after the Pre-Construction meeting (or one week after the Notice to Proceed date is firmly established), the Contractor shall submit to the Engineer, two (2) copies of a detailed Critical Path Model (CPM) chart outlining the detailed progress of all major and critical elements of the project by weeks, from beginning of project to end. The chart shall begin at the

established Notice to Proceed date and progress on a calendar basis, week by week, to the end of the project.

The Contractor shall submit updated CPM charts as required by the Engineer. This shall typically be on a monthly basis. The required submittals of updated CPM charts may be less frequent than monthly, if approved by the Engineer.

Neither the City nor the Engineer shall accept liability or responsibility for the reasonable or workable nature of the CPM schedules prepared and submitted by the Contractor—that responsibility shall remain with the Contractor.

21. 108 COMMENCEMENT, PROSECUTION AND PROGRESS, Add the following to Subsection 108.5, LIMITATION OF OPERATIONS:

3. WORK HOURS

Regular working hours shall be defined as one 8-1/2 hour shift per day, Monday through Friday, exclusive of City holidays.

Work in excess of regular working hours shall be defined as overtime. For overtime which becomes necessary, the Contractor shall make a written request to the Engineer at least eight (8) calendar days before the desired overtime. The request shall include the duration, dates, times, reason for overtime, and a statement of the consequences if overtime is not approved.

The Contractor shall not schedule any overtime work which requires inspection, survey, or material testing without written permission from the Engineer two (2) working days before the proposed overtime work. The Engineer reserves the right to deny the requested overtime. If an overtime request is denied, the Engineer may extend the contract time at no additional cost to the City, including extended overhead costs.

Unscheduled Overtime

Overtime that is not requested and approved in accordance with the above procedure shall be defined as unscheduled overtime. All costs (including appropriate overhead) shall be paid by the Contractor by deduction from the contract.

Emergency Overtime

An emergency is defined as work required for a situation that is not within the Contractor's control.

With the Engineer's approval, the Contractor will be permitted to work overtime without being responsible for paying the City's costs.

22. 108 COMMENCEMENT, PROSECUTION AND PROGRESS, Add the following to Subsection 108.10, FORFEITURE AND DEFAULT OF CONTRACT:

City's Right to Perform and Terminate for Convenience

If the City provides the Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and the Contractor fails to comply in a time frame specified, the City may have work accomplished by other sources at the Contractor's expense.

If Contractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Sub-consultants and/or Subcontractors, (v) prosecute the Contract Services with promptness and diligence to ensure that the Contract Services are completed by the Contract Time, as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then the City, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth below.

Upon the occurrence of an event set forth above, City may provide written notice to Contractor that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Contractor's receipt of such notice.

If Contractor fails to cure, or reasonably commence to cure, such problem, then City may give a second written notice to Contractor of its intent to terminate within an additional seven (7) day period.

If Contractor, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then the City may declare the Agreement terminated for default by providing written notice to Contractor of such declaration.

Upon declaring the Agreement terminated pursuant to the above, City may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Contractor hereby transfers, assigns and sets over to City for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

In the event of such termination, Contractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, the Contractor will only be entitled to be paid for Work performed and accepted by the City prior to its default.

If City's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Contractor shall be obligated to pay the difference to City. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by the City in connection with the re-procurement and defense of claims arising from Contractor's default.

If the City is found to have improperly terminated the Agreement for cause or default, the termination shall be converted to a termination for convenience in accordance with the provisions of this Agreement.

23. 108 COMMENCEMENT, PROSECUTION AND PROGRESS. Add the following to Subsection 108.11, TERMINATION OF CONTRACT:

TERMINATION FOR CONVENIENCE

The Owner for its own convenience has the right for any reason and at any time to terminate the contract and require the Contractor to cease work hereunder. Such termination shall be effective at the time and in the manner specified in the notification to the Contractor of the termination. Such termination shall be without prejudice to any claims which the Owner may have against the Contractor. In the event of a termination for convenience, the Contractor shall be paid only the direct value of its completed work and materials supplied as of the date of termination, and Contractor shall not be entitled to anticipated profit or anticipated overhead or any other claimed damages from the Owner, Architect or the Engineer. If the City is found to have improperly terminated the Agreement for cause or default, the termination shall be converted to a termination

for convenience in accordance with the provisions of this Agreement.

CANCELLATION OF CONTRACT FOR CONFLICT OF INTEREST

All parties hereto acknowledge that this agreement is subject to cancellation by the City of Phoenix pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

24. 109 MEASUREMENTS AND PAYMENTS, Add the following to Subsection 109.4.3, DUE TO EXTRA WORK:

ALLOWANCE FOR EXTRA WORK

Contract allowance items are provided for the purpose of encumbering funds to cover the costs of possible change order work. The amount of the allowance item is determined by the Engineer and is not subject to individual bid pricing. All bidders shall incorporate the amount pre-entered in the bid proposal and shall reflect the same in the total amount bid for this project.

This allowance item provides an estimated funding to cover unforeseen changes that may be encountered and corresponding extra work needed to complete the contract per plan. Unforeseen extra work, if any, shall be as approved by the Engineer; for example, extension of unit bid prices, negotiated price or time and material, in accordance with MAG Specification Section 109.4 and 109.5.

It shall be understood that this allowance item is an estimate only and is based on change order history of similar projects. It shall not be utilized without an approved contract change order. It is further understood that authorized extra work, if any, may be less than the allowance item.

25. 109 MEASUREMENTS AND PAYMENTS, Add the following to Subsection 109.4 COMPENSATION FOR ALTERATION OF WORK:

109.4.7 CHANGE ORDERS

Owner reserves the right to decrease adjustments made in any change order if, upon audit of Contractor's records, the audit discloses contractor provided false or inaccurate cost and pricing data in negotiating the change order. In enforcing this provision, the parties shall follow the procedure provided in the Federal Acquisition Regulation (FAR) clause 52.214-27, found in 48 CFR Part 52.

26. 109 MEASUREMENTS AND PAYMENTS Subsection 109.7, PAYMENT FOR BOND ISSUE AND BUDGET PROJECTS, Delete the first three paragraphs in their entirety and replace with the following Subsection 109.7, PAYMENT FOR BOND ISSUE AND BUDGET PROJECTS:

1. PARTIAL PAYMENTS

The contracting agency will make a partial payment to the Contractor on the basis of an approved estimate prepared by the Engineer or the Contractor for work completed and accepted through the preceding month. The notice to proceed date, which is designated for the specific project involved, will be used as the closing date of each partial pay period. Payment will be made no later than fourteen (14) days after the work is certified and approved. City shall review payment requests and make recommendation of approval or denial within seven (7) calendar days.

This is a federally funded project. Therefore, notwithstanding A.R.S. § 34-221, the City will not withhold retainage from progress payments. Neither the contractor, nor the subcontractor of any tier, may withhold any retainage on progress payments to subcontractors or suppliers of any tier. Withholding of retainage, reducing payments, or sanctions where provided in the contract will be applied to all partial payments.

27. **109 MEASUREMENTS AND PAYMENTS**, Delete Table 109-1 in **Subsection 109.9, DOLLAR VALUE OF MAJOR ITEM**, and substitute the following:

<u>CONTRACT AMOUNT</u>	<u>MAJOR ITEM IS DEFINED AS ANY ITEM EQUAL TO OR GREATER THAN THE FOLLOWING</u>
Up to \$1 million	\$15,000 or 3%, whichever is greater
\$1 million to \$3 million	3% of the original contract amount to a maximum of \$75,000.00
\$3 million to \$5 million	2.5% of the original contract amount to a maximum of \$90,000.00
Over \$5 million	1.5% of the original contract amount to a maximum of \$125,000.00

CONTINGENCY ITEMS

Contingency items which fall under the definition of a major item are subject to negotiation if decreased by more than twenty (20) percent.

Contingency items shall not increase more than twenty (20) percent without being subject to renegotiation, regardless of the percentage of that item relative to the total contract amount.

28. **110 NOTIFICATION OF CHANGED CONDITIONS AND DISPUTE RESOLUTION**, Add the following to **Subsection 110.1 GENERAL**:
SOILS INFORMATION

Even if not specifically shown on the plan provided, the Contractor may encounter large cobbles, boulders, caliche, conglomerate, hard rock, perched groundwater, historic or prehistoric cultural resources, or other differing site conditions on this project. **No additional compensation will be made for any differing site condition that may be encountered.**

SPECIAL PROVISIONS

The scope of the contract shall include the given in the Special Provisions and elsewhere in the Project Specifications. There are no plans for this project; a typical cross section is provided at the end of the Special Provisions. A total of approximately 29.9 miles of alleyways shall be dust proofed. A list of the 12 Quarter Sections (QS) to be dust proofed is provided at the end of these Special Provisions. A general alleyway location map is provided on page MAP 1, and 12 quarter section maps are provided on pages M.-2 through M.-13. Estimated dust proofing quantities for the corresponding alleyways are given on page T.-1 through T-8.

SITE INSPECTION

Bidders should visit and familiarize themselves with any conditions which may affect performance and bid prices. Submission of a bid will be prima facie evidence that the Bidder, in fact, make a site inspection and is aware of all conditions affecting performance and bid prices. The Contractor is also encouraged to review and consider the current Bulk Trash Pickup Schedule (See <https://www.phoenix.gov/publicworks/garbage/bulktrash>) prior to establishing their work schedule.

DAMAGES WITHIN PROJECT AREA

The Contractor shall take care to protect all existing walls, utilities, landscaping and/or any other existing feature within or adjacent to the alleyways to be dust proofed. Any claims of damage within the project area shall be the responsibility of the Contractor unless he can prove the damage existed prior to his operation. All damaged locations will need to be identified as required in Section 402.1 of these Special Provisions.

BID QUANTITIES

The quantities listed in the specification are for bid purpose. The actual quantities provided to the Contractor may be adjusted to accommodate field conditions.

1. **105 CONTROL OF WORK, Add the following to Subsection 105.6 COOPERATION WITH UTILITIES:**

The following utility companies have facilities in the area but are not anticipated to be in conflict; AGL Networks LLC dba Zayo, Arizona Public Service, AT&T, Century Link, City of Phoenix Streetlighting, City of Phoenix Water Services, Cox Communications, Level 3 Communications, MCI Telecommunications, S.R.P. Water, Sprint, Southwest Gas, Swissport Fueling, Windstream and Verizon. All utilities are expected to be protected in plan. The Contractor shall conduct his work as specified in MAG Section 105.6.

2. **201 CLEARING AND GRUBBING, Add the following to Subsection 201.3 CONSTRUCTION METHODS:**

The horizontal alignment of the new dust proofing section will be centered along the alley width, adjusted to avoid conflicts with permanent features. The Contractor shall clear all debris, trash, tires, vegetation, excess soil, and other solid wastes within the area of the alleys to be graded for a minimum of 12 feet wide to accommodate new dust proofing surface. These limits may need to be extended to maintain adequate drainage. The use of cold planers, pavement milling or grinding machines for the purpose of clearing and grubbing will not be allowed. The Contractor shall dispose of all previously stated materials in a legal manner at a proper disposal site. The Contractor shall pay for all work including disposal fees, for the entire project.

Prior to clearing and grubbing operations, the contractor shall locate all manhole and sewer cleanout locations to verify that they are clean and accessible at no additional cost.

Herbicide Treatment of Alley

The contractor shall apply post-emergence and pre-emergence herbicide in the 12-foot wide area to clear in each alley as specified here in.

The herbicide solution shall be applied by a Contractor that is licensed and certified to do this work.

The Post-Emergent Herbicide for Weed Control

Prior to any ground disturbance, the contractor shall apply the post emergent herbicide as follows;

Summer: For Project constructed in the summer, the contractor shall use Monsanto brand ROUNDUP herbicide or approved alternate per label instructions as the post-emergence herbicide.

Winter: For Project constructed in the winter, the contractor shall use Reward herbicide or approved alternate per label instructions as the post-emergence herbicide.

The Contractor shall apply post-emergent herbicide in the alleys at least **14 days** prior to clearing and grubbing and subgrade preparation.

The Pre-Emergent Herbicide for Weed Control

The pre-emergent herbicide shall be Surflan, Pendulum or an approved equal. The use of these products is intended to establish a level of performance only and the use of other commercial products applied at the rates recommended by the manufacturer, which can be demonstrated to achieve or exceed the results of the products above, will be permitted.

The Contractor shall apply the pre-emergent herbicide in the alleys immediately prior to the application of the dust proofing material. Before application of pre-emergence, the alley area to be treated must be free of weeds.

The contractor shall apply the herbicide with spraying equipment required by trade standards in accordance with product manufacturer's specification. The herbicide shall be dissolved in water and applied as a solution in accordance with the Manufacturer's recommendations. The concentration of the solution and the application rate shall be in accordance with the Manufacturer's specifications. The equipment used for the application shall be capable of providing a uniform rate and shall be equipped with a mechanical mixer or a hydraulic by-pass system that will provide agitation.

3. 201 CLEARING AND GRUBBING, Delete Subsection 201.5 PAYMENT, CLEARING, AND GRUBBING in its entirety and substitute the following:

Measurement will be by the field measured square yard for all labor, material and equipment used for clearing, grubbing and preparing subgrade of the alleys grades. Payment will be made at the unit bid price for "M2010030 - CLEARING & GRUBBING (MAG 201) AND SUBGRADE PREPARATION (MAG 301)".

Measurement for herbicide application will be by the field measured square yards of alleys treated. Payment will be made separately for post-emergence and pre-emergence and application. Payment for post-emergence will be made under the item "M4307004 - Weed Control Post-

Emergence", and payment for pre-emergence will be made under the item "M4307002 - Weed Control Pre-Emergence".

4. **205 ROADWAY EXCAVATION, Delete the third paragraph and Add the following to Subsection 205.2 UNSUITABLE MATERIAL:**

The Contractor shall excavate unsuitable materials to a depth directed by the Engineer. Backfill materials may be either half-sack slurry Controlled Low Strength Materials (CLSM) per MAG Section 728 or ABC per MAG Subsection 702.1.

Modify Subsection 205.8 PAYMENT and Subsection 205.8 PAYMENT to read as follows

Measurement for removal of unsuitable materials and its replacement with half sack slurry ABC or clean fill materials, will be by cubic yard of actual material removed. Payment for removal, disposal and replacement of unsuitable material will be at the unit price bid per cubic yard for "REPLACE UNSUITABLE SUBGRADE MATERIALS (CONTINGENT Item)". Payment for removal of degraded asphalt is not included in this bid item.

5. Add the following new Section, **232 STORM WATER POLLUTION PREVENTION – BEST MANAGEMENT PRACTICES:**

Description

Implementation of "Best Management Practices" (B.M.P.'s) to reduce stormwater pollution shall be undertaken by the Contractor on a multi-tiered, most cost-effective approach. The Contractor shall utilize the lowest-cost acceptable B.M.P. available to address each type of potential stormwater pollution situation encountered on the project. Should this prove ineffective in resolving the stormwater pollution problem, additional, higher-cost B.M.P.'s may need to be employed, upon approval by the City.

Construction Requirements

Typical multi-tiered B.M.P. approaches to construction operations may include:

A. ROADWAY SUBGRADE EXCAVATION:

1. Tier I - The excavated area will create, in effect, a temporary retention area. This may provide adequate control of storm runoff to prevent sediment from leaving the site. Pumping or other methods utilized to drain the excavation shall employ filter fabric or other filtering method to remove sediment before leaving the site or entering the storm drain system.
2. Tier II - Catch basin inlet protection (utilizing filter fabric, gravel, etc.) may be necessary should Tier I controls prove inadequate. Care shall be exercised to ensure that Tier II B.M.P.'s do not result in blockage of drainage and resultant flooding of adjacent properties.

B. OPEN PIPELINE TRENCHES:

1. Tier I - The open trench itself will act as a temporary retention area. The Contractor shall provide a low-cost, readily installed/removed temporary device on the open end of the pipe to prevent sediment-laden stormwater from entering the pipe. This may consist of a temporary "plug" incorporating filter fabric, a temporary weir, or other device capable of removing sediment before allowing stormwater to enter the pipe. Care must be taken to prevent damming of floodwaters in the excavation that could result in "floating" the pipe.

2. Tier II - If Tier I protection does not prove satisfactory, the Contractor may need to install straw bales, sandbag berms, or temporary diversion dikes around the perimeter of the open excavation to prevent sediment-laden stormwater from entering the open excavation. Due to installation/removal time, such devices need only be installed during periods of likely precipitation and runoff. Earthen dikes are the preferred alternate, due to ease of installation and removal. Care must be taken to assure that runoff is not blocked to the extent that flooding of adjacent properties will result.

C. BACKFILLED PIPELINE TRENCHES:

1. Tier I - As with roadway subgrade excavations, pipeline trenches which have been backfilled but not yet paved will be several inches lower than adjacent pavement areas, and will therefore act as temporary retention areas.
2. Tier II - If the "retention" provided by the backfilled area does not prevent sediment-laden runoff from leaving the excavated area, perimeter controls such as silt fence, straw bales, sandbag berms, or gravel filter berms may need to be installed around the downstream edge(s) of the backfilled area. As with open trenches, the selection of the appropriate measure, extent of its application, and time period during which it is needed will be dependent upon cost, site conditions, ease of installation/removal, and likelihood of precipitation/runoff. Again, care must be taken to ensure that diversion of stormwater onto adjacent properties does not result from these installations.

Another stormwater control method, which the Contractor may need to consider, is limiting the amount of area disrupted and therefore subject to sediment-laden stormwater runoff at any one time. Should such project phasing prove necessary due to the failure of other B.M.P.'s, the Contractor shall revise his construction activities accordingly, at no additional cost to the City.

Standards for installation of the above B.M.P.'s are provided in the Flood Control District of Maricopa County's "Drainage Design Manual for Maricopa County, Arizona, Volume III, Erosion Control". Installation and operation of B.M.P.'s shall be in accordance with that manual.

There shall be no separate measurement or payment for preparing or developing Storm Water Pollution Prevention Plans, or for preparing NOI's or NOT's or obtaining an AZPDES Permit, all these costs being considered incidental to the cost of the project.

Use of individual BMP items shall conform to the Contractor's approved Storm Water Pollution Prevention Plan (SWPPP).

Measurement and Payment

This project includes a pay item "ALLOWANCE FOR STORMWATER POLLUTION PREVENTION BEST MANAGEMENT PRACTICE (BMP'S)". The amount of this allowance is determined by the Engineer, and is not subject to individual bid pricing. All bidders shall incorporate the amount pre-entered in the bid proposal and shall reflect the same in the total amount bid for this project.

Payment for various types of necessary BMP's shall be made from this allowance based on approved invoiced cost of the materials only, plus taxes, and a maximum 15 percent markup for overhead and profit. There will be no separate measurement or payment for the preparation or development of the Storm Water Pollution Prevention Plan; labor or equipment necessary to install, maintain or remove the BMP materials; moving existing BMP materials from one location to another on the same project; or constructing BMP swales or berms, all of these costs being considered

incidental to the cost of the project.

6. **301 SUBGRADE PREPARATION**: Add the following to **Subsection 301.1, DESCRIPTION**:

Subgrade preparation includes grading, hauling out excess soil, watering and compacting native or fill material in all alleys. The Contractor shall grade the alley to provide a smooth, rut-free surface while maintaining grade for proper surface drainage. Grading shall extend to within two (2) feet of the alley edge or per directions from the Engineer. The prepared grade shall be straight and run parallel to adjacent walls or property alignment.

The Contractor shall use a water truck for all grading at all times and for dust control and soil conditioning for compaction. All excess material resulting from grading operations shall be hauled to a proper dump site at the Contractor's cost.

7. **301 SUBGRADE PREPARATION**, Delete **Subsections 301.3, RELATIVE COMPACTION in its entirety and substitute the following**:

Suitable Subgrade Areas:

For areas where suitable subgrade occurs, the Contractor shall grade and compact the existing subgrade to provide a firm and smooth surface without any loose soil on the surface. The Contractor shall compact the graded area to a stable condition to the satisfaction of the Engineer before applying the dust proofing materials. No density test is required.

Unsuitable Subgrade Areas:

Where unsuitable subgrade has been replaced, the Contractor shall compact the fill area to a stable condition to the satisfaction of the Engineer before applying the dust proofing materials. A minimum 95% compaction is required when areas are filled using ABC. Density testing may be required as directed by the Engineer.

Removal of Degraded Asphalt Milling

For alleys with existing degraded asphalt millings or when directed by the Engineer, the contractor shall remove and dispose of degraded asphalt millings previously placed in the alleys for dust control before grading the alleys. In alleys where the asphalt millings are removed, the contractor shall grade the alley in such a way that drainage will flow to the adjacent roadway gutters and away from adjacent homes and as specified in subgrade preparation above.

The Contractor shall dispose of all asphalt millings in a legal manner at a proper disposal site with calibrated scale so that the weight of the material disposed can be verified and weigh tickets submitted to the Engineer or his representative.

In alleys where removal of asphalt millings results in exposing manhole frames and covers to elevations above the dust proofed grade, the contractor shall lower the exposed manhole to the same elevation as the final dust proofed surface in accordance with MAG Standard Detail 422.

8. **301 SUBGRADE PREPARATION**, Delete **Subsections 301.7, MEASUREMENT, and 301.8, PAYMENT**, and substitute the following:

301.7 MEASUREMENT:

Measurement for clearing, grubbing and subgrade preparation shall be made by the square yard of the roadway areas excavated and/or graded.

For alleys with degraded asphalt millings, a separate measurement will be made for the tons of asphalt milling loaded and disposed of from the alleys as described under "Removal of Degraded Asphalt Millings". This item does not include material removed for clearing, grubbing and subgrade preparation.

Adjustment of manholes shall be per each manhole adjusted.

301.8 PAYMENT

Suitable Subgrade Areas:

Payment will be made at the unit bid price for "M2010030 - CLEARING & GRUBBING (MAG 201) AND SUBGRADE PREPARATION (MAG 301)", for all labor, material and equipment used for clearing, grubbing and preparing subgrade of the alleys grades.

Unsuitable Subgrade Areas:

Payment will be made at the unit bid price for "M205100 - REPLACE UNSUITABLE SUBGRADE MATERIALS (CONTINGENT ITEM)". This item includes the excavation and proper disposal of unsuitable materials as well as acquisition of replacement materials, delivery, spreading, compacting, testing, grading and all other items necessary to complete replacement to the required density.

Removal of Degraded Asphalt Milling

Payment will be made at the unit bid price under the item "M3010101 - REMOVAL OF DEGRADED ASPHALT MILLINGS (CONTINGENT Item)". This item includes all items described in 2nd paragraph of subsection 301.7 above. Material removed from the alleys due to removal of unsuitable sub-grade, clearing and grubbing, or subgrade preparation are incidental to their corresponding items of work, and are not included under "REMOVAL OF DEGRADED ASPHALT MILLINGS (CONTINGENT Item)".

9. 330 ASPHALT CHIP SEAL, Add the following to Subsection 330.1 DESCRIPTION:

The Contractor shall have a water truck available to moisten the subgrade prior to the application of the dustproofing materials.

Work on narrow, sharp turns or dead-end alleys that are difficult for the boot truck to cover shall be done by a hand crew to neat lines.

The pre-coated stone chip application shall conform to the widths stated in the Special Provisions or as designated by the Engineer.

All areas missed by the chip spreader or hand crew must be completed within five days, including weekends if behind schedule, and reported as completed one day after the work takes place.

If any missed areas are not completed within five working days, the Contractor will not be allowed to advance to the next area until such time as all missed areas have been completed.

Subsection 330.2 MATERIALS, Modify Subsection 330.1 ASPHALT as follows:

Liquid Grade Asphalt shall be MC-250 in accordance with MAG Section 712.

Subsection 330.2 MATERIALS, Modify Subsection 330.2 AGGREGATE as follows:

The cover material (chips) shall meet the requirements of Section 716. Gradation shall be 3/4-inch as specified in Table 716-2. Chips shall be precoated and placed in one application following the Liquid Grade Asphalt.

Subsection 330.3 TIME OF APPLICATION AND WEATHER CONDITIONS, Add the following to Subsection 330.3:

In order to avoid unfavorable weather conditions related to the application of the Dustproofing

treatment, the contractor may request a Suspension of Work during extended unfavorable weather conditions. The Contractor will be responsible to maintain adequate dust control and erosion control protection on all disturbed alleys sections that have not received the final dust proofing treatment as well as providing acceptable access to all alleys until the work resumes. No additional compensation will be made for delays.

Subsection 330.4 CONSTRUCTION METHODS, Modify **Subsection 330.4.2 Application of Bituminous Material** as follows:

Delete second paragraph in its entirety and insert:

The Engineer shall designate necessary application rates based on alley surface conditions. When using the 3/4-inch nominal-sized chips and based on an asphalt temperature of 260+ , the asphalt cement binder shall be applied to the surface at a rate of 0.55 to 0.65 gallons per square yard. Only a single application is required.

Any asphalt binder applied in excess of the maximum amount designated by the Engineer for the respective materials shall be at no additional cost to the Contracting Agency. When any binder is applied at less than the low tolerance rate designated by the Engineer, the Contractor shall be required to flush the Fractured Aggregate Surface Treated areas at no additional expense to the Contracting Agency.

Modify the fourth paragraph, second sentence to read as follows:

The maximum distance that the bituminous material may be applied in advance of the chips shall be 100 feet.

Add the following to the fifth paragraph:

The Contractor shall be responsible for damage to automobiles and adjacent properties from bituminous material overspray.

Subsection 330.4 CONSTRUCTION METHODS, Modify **Subsection 330.4.3 Application of Cover Material** as follows:

Delete first paragraph in its entirety and insert:

Immediately following the application of the binder material, pre-coated chips shall be spread with a self-propelled mechanical spreader similar and equal to a Flaherty Spreader.

The spreader box for alleys shall have a width spreading ability from 1 foot to at least 15 feet in controlled increments of not more than 1-foot widths in the center portion of the box and not more than 6-inch increments on the outside portions.

The spreader shall have a workable measuring device similar to a survey foot meter to measure distance. The spreader shall have an operating backup horn in good working condition.

Delete fifth paragraph in its entirety and insert:

Pre-coated chips shall be applied to the alley surface at a rate of 50 to 60 pounds per square yard. Only a single application is required for this option. The Engineer may modify the necessary application rates based on alley surface conditions. Any pre-coated chips applied in excess of the maximum amount designated by the Engineer shall be at no additional cost to the Contracting Agency.

Subsection 330.4 CONSTRUCTION METHODS, Modify **Subsection 330.4.4 Rolling** as follows:

Modify fourth sentence to read as follows:

The roller shall not travel in excess of five (5) miles per hour.

Add the following:

All rolling will consist of two forward roller passes and one pass in the reverse direction.

Subsection 330.4 CONSTRUCTION METHODS, Delete **Subsection 330.4.6 Surplus Aggregate Removal** and replace with the following:

Surplus aggregate left within the alley must not be any deeper than one (1) inch in any area. Aggregate that exceeds one inch depth must be removed and disposed of by the Contractor. Extra care is needed to prevent surplus aggregate from spreading into adjacent private property and streets. No additional payment will be made for this work.

Subsection 330.4 CONSTRUCTION METHODS, Add the following to **Subsection 330.4.7 Distributing Equipment**:

In addition, the distributor truck:

A. Shall be of the hydrostatic type.

B. Shall have spray bar shift and lift features that can be controlled by the boot man from the platform on the rear of the distributor while the truck spreading asphalt.

C. Shall have accommodations to allow the boot man to ride on the rear of the truck and should be situated so there is a full view of the sprays from the spray bar.

D. Shall be equipped with a heating device that must be capable of maintaining an asphalt temperature to the top of specifications (320° F) while the asphalt is being circulated through the spray bar.

E. Shall be capable of being operated within a 2-inch tolerance. The drivers of the distributor trucks used for applying asphalt may be asked to demonstrate to the Engineer their ability to drive the truck within the two-inch tolerance.

F. When spreading asphalt, may not travel in excess of four miles per hour.

G. Must be equipped with wind guards at all times.

H. Must have a boot man with the boot truck at all times.

Subsection 330.6 MEASUREMENT, Add the following paragraph:

Liquid Asphalt and Pre-coated Chip material not incorporated into the final dust-proof surface will be considered as waste and the measurement will be deducted from the Certified Weight Slip quantities. No measurement for payment will be done on waste material.

10. **345 ADJUSTING FRAMES, COVERS, VALVE BOXES, AND WATER METER BOXES**, Revise **Subsection 345.1 DESCRIPTION**, **Subsection 345.5 MEASUREMENT**, and **Subsection 345.6 PAYMENT** as follows:

Delete **Subsection 345.1 DESCRIPTION** in its entirety, and substitute the following:

Adjustment of manhole frames, covers, clean outs, valve boxes, survey monument boxes (and water meter boxes if located in the pavement) to finish grade shall be done AFTER placement of the final surface course pavement.

Any missing manhole frames or covers and water valve or survey monument box hardware (such

as lids, for example) shall be reported in writing to the Engineer during the initial lowering process to allow arrangements to be made to obtain replacement hardware. Missing hardware that is properly reported to the Engineer will be supplied to the Contractor by the City of Phoenix or the appropriate private utility company.

Replacement of any missing hardware that was not reported to the Engineer initially as specified, that comes up missing later when these facilities are brought back up to finish grade, shall be the full responsibility of the Contractor, at no additional cost to the City.

In addition, all manhole frames and covers, water valve and survey monument boxes or other related hardware removed by the Contractor during the lowering process shall be maintained in a secure area, and the Contractor shall bear full responsibility for this hardware material. Any hardware lost by the Contractor shall be replaced in-kind, at no additional cost to the City.

All areas of existing pavement removed for adjustments that will be subjected to traffic prior to placement of final concrete collar rings shall be temporarily filled with hot-mix Type D-1/2 asphalt and roller-compacted flush with the adjacent pavement. There shall be no separate measurement or payment for this temporary hot-mix asphalt or placement or subsequent removal, the cost being considered incidental to the cost of the adjustment.

After removal of asphalt pavement in the area of adjustment, and prior to placement of the final concrete collar ring around the frame or valve box (as shown on City of Phoenix Detail P-1391 and MAG Detail 422), the asphalt pavement in proximity of the adjustment shall be rolled with a self propelled, steel wheel roller.

The concrete collar ring around the frame or valve box shall be circular, and shall be a minimum of eight (8) inches thick, placed flush with the adjacent new pavement surface. At a minimum, concrete shall be MAG Class 'AA' on all paved streets. All concrete shall be obtained from plants approved by the Engineer.

A single No. 4 rebar hoop shall be placed in each adjustment collar. The hoop diameter shall be such that its placement is centered between the edge of the manhole frame or valve box, and the outside edge of the concrete collar. The depth of the hoop shall be such that it is centered in the thickness of the collar. Each concrete ring shall be scored radially at quarter-circle points. Score lines shall be 1/4-inch wide by 1/2-inch deep. The concrete collar surface shall be rough broom-finished. All pavement removed for adjustments shall be replaced with concrete.

Traffic shall not be allowed on the collars until the concrete has reached a minimum compressive strength of 2500 psi on residential streets, and 3000 psi on collector and major streets. On major streets, the Contractor shall use "high-early" cement in the concrete mix, approved by the Engineer, to minimize delay in re-opening the street to traffic.

Prior to commencing work on the adjustments, the Contractor shall submit a written adjustment plan and schedule to the Engineer for approval. At the request of the City, the contractor will provide access to all services under construction at no additional cost.

Sewer manhole frames and covers shall be matched, kept together, and replaced to their original locations. The Contractor shall remove existing asphalt, chip seal, or other materials from all sewer manhole covers and water valve box lids to be adjusted on this project. The Contractor's method for removal shall be approved by the Engineer prior to actual work. Cover cleaning shall be completed prior to adjustment of frames. Also, all water valve risers shall be thoroughly cleaned to fully expose the valve operating nut.

QUARTER SECTION MAPS FOR WATER AND SEWER LINES

The Contractor may obtain up to three sets of waterline and sewerline quarter section maps for the

streets included in this project after the contract is awarded and issued. To order the maps, the Contractor shall bring an official contract specification book and a list of desired quarter section maps to the Technical Support Services counter on the 8th Floor of City Hall, 200 W. Washington Street. Up to three sets of maps will be provided at no cost to the Contractor. If more than three sets are requested, the Contractor shall purchase the additional sets.

WATER VALVE AS-BUILTS

Upon completion of water valve box adjustments, the Contractor shall provide one complete accurate and clearly legible set of as-built waterline Quarter Section maps to the Engineer. The Contractor shall mark and color code all water valves on the maps as follows:

Blue- All valves shown on the Q.S. map found and adjusted.

Yellow- All valves shown on the Q.S. map but not found in the field.

Red- Any valve not shown on the Q.S. maps but discovered and adjusted. (Draw valve symbol on map at appropriate location and provide offset and location dimensions for valves in this category.)

Delete MAG Subsections 345.5 MEASUREMENT and 345.6 PAYMENT and substitute the following:

345.5 MEASUREMENT

Measurement for adjustments shall be per each respective item.

345.6 PAYMENT

Payment for the appropriate item will be made at the unit price bid for 'ADJUST EXISTING MANHOLE FRAME AND COVER, STANDARD DETAIL 422'; 'ADJUST EXISTING TYPE 'A' WATER VALVE, STANDARD DETAIL P-1391 AND P-1391-1'; 'ADJUST EXISTING SEWER CLEAN-OUT FRAME & COVER, STANDARD DETAIL P-1270'; 'ADJUST SURVEY MONUMENT HANDHOLE FRAME AND COVER, STD DET P-1270'; or ADJUST EXISTING WATER METER BOX & COVER. Payment will include all labor, materials, and equipment necessary to satisfactorily clean and make complete adjustments.

There will be no separate measurement or payment for adjusting NEW manhole frame & covers, valve boxes, sewer clean-out frame & covers or water meter boxes constructed with the project. Payment for adjusting these new facilities is considered included in the price bid for the appropriate new item.

11. 350 REMOVAL OF EXISTING IMPROVEMENTS, Add the following to new MAG and COP Supplement to MAG Section 350:

A. Miscellaneous Removal and Other Work

This item includes furnishing all labor, material, tools and equipment to complete the removal and disposal of the items specified on the plans, listed in MAG Section 350 and City of Phoenix.

Supplement thereto and other work of a minor nature which may develop during course of construction, including any encroaching items not removed by property owners.

Payment for this work will be included in the square yard price quoted in the bid proposal for bid item "M2010030 - CLEARING & GRUBBING (MAG 201) AND SUBGRADE PREPARATION (MAG

301)".

B. **Disposal of Surplus Material Which Does Not Contain Asbestos**

All surplus and/or waste material may be disposed of at the Contractor's discretion subject to the following conditions:

1. If the City landfills are used, the Contractor shall pay the normal dumping fee.
2. If private property within the City limits is used, the Contractor shall obtain written permission from the property Owner and deliver a copy of this agreement to the Engineer prior to any hauling or dumping. All disposal and grading shall be in strict conformance with the City of Phoenix Grading and Drainage Ordinance. The Contractor shall obtain and pay for the necessary permit(s).
3. If the surplus material is disposed of outside the City limits, the Contractor shall comply with all applicable laws/ordinances of the agency concerned and be responsible for all cost incurred. No measurement or direct payment will be made for the hauling and disposal of surplus and/or waste material. The cost shall be considered incidental to the cost of the project.

12. **401 TRAFFIC CONTROL**, Add the following to **Subsection 401.4 TRAFFIC CONTROL MEASURES**:

SEQUENCE OF CONSTRUCTION

The sequence of construction shall conform to the requirements of the Special Traffic Regulations and the following requirements:

The alley grading process shall not proceed more than one quarter-section ahead of the paving operations, except that in no case will the grading operation proceed more than 5 days ahead of the paving operation, including weekends and holidays, without the Engineer's approval. Adequate dust control and track out control must be provided by the Contractor. It will be the Contractor's responsibility to maintain alley clearing, grubbing, grading and subgrade preparation in an acceptable condition until paving operations are completed. Any rework will be at no additional cost. The Contractor will also schedule the repair of any damages caused by its operation to be completed promptly after paving operations. The Engineer shall have the final decision in determining the time period between grading operations and paving operations. Sequence of work shall be approved by the City.

Night work will **not** be allowed on this project.

The right to direct the sequence of construction is a function vested solely with the Engineer. Prior to commencement of the work, the Contractor shall prepare and submit to the Engineer, a written phasing plan and work schedule for the project. This plan and work schedule shall be submitted to the Engineer at the Pre-Construction Conference for review.

When approved, the phasing plan and work schedule shall not be changed without the written consent of the Engineer. Orderly procedure of all work to be performed under this contract shall be the full responsibility of the Contractor. The work schedule shall include the hours per day and the days per week that the Contractor plans to work on the project site.

13. **401 TRAFFIC CONTROL**, add the following to **Subsection 401.5 GENERAL TRAFFIC REGULATION**:

TRAFFIC REGULATIONS

A. The following shall be considered Arterial streets:

All streets listed as “Major” and “Collector” on the city of Phoenix Street Classifications Map

The following shall be considered Collector streets:

All streets listed as “Collector” on the city of Phoenix Street Classifications Map

- B. All traffic and/or traffic control devices on this project shall be provided, maintained and/or controlled as specified in the City of Phoenix Traffic Barricade Manual, latest edition and addendums thereof.
- C. Permission to restrict City streets, sidewalks and alleys (street closure permits) shall be requested as specified in the City of Phoenix Traffic Barricade Manual, latest edition and addendums thereof.
- D. Unless otherwise provided for in the following "Special Traffic Regulations", all traffic on this project shall be regulated as specified in the City of Phoenix Traffic Barricade Manual, latest edition and addendums thereof.
- E. No deviation to the "Special Traffic Regulations will be allowed or implemented unless submitted to the Engineer for review and approval two (2) weeks prior to proposed work.
- F. Only City of Phoenix certified contractors can set, move, or remove temporary traffic control devices (signs, barricades, etc.). This annual certification can be scheduled by calling 602-262-6235.
- G. Civil Sanctions for temporary traffic control violations apply as follows:

Civil Sanction Per Day	Violation Description
\$1,500	Creating an eminent risk of death or injury to the public within the public right-of-way
\$1,000	Restricting the right-of-way without proper certification or a right-of-way temporary use permit
\$1,000	Restricting traffic during peak traffic hours as described in the <u>Traffic Barricade Manual</u> without authorization
\$1,000	Failing to correct or cure a violation, as listed in this schedule, within the time period stated on the warning notice
\$1,000	Restricting traffic at signalized intersections without any work occurring
\$500	Closing a sidewalk improperly or closing a sidewalk without proper certification or closing a sidewalk without a right-of-way temporary use permit
\$500	Violating the restriction limits, times and locations, of the right-of-way temporary use permit

\$500	Missing or improper use of advance warning signs
\$500	Missing or improper use of barricades and channelizing devices
\$250	Leaving advanced warning signs facing traffic after restriction has been removed – per one traffic direction
\$250	Leaving traffic control devices in the right-of-way twenty-four hours after right-of-way temporary use permit expires, unless a request for a permit extension is received by the City prior to the expiration of such permit
\$250	Use of “unacceptable” quality traffic control devices as described in the <u>Traffic Barricade Manual</u>
\$250	Rendering a bus stop inaccessible without relocating it or making other accommodations

H. Parking Meter Fees: To take a parking meter out of service requires a \$35 application fee and \$10 per meter per day.

14. **401 TRAFFIC CONTROL**, Add the following to **Subsection 401.5 GENERAL TRAFFIC REGULATION**:

SPECIAL TRAFFIC REGULATIONS

Any Restrictions and/or Closures will only be approved based on scope of work.

Traffic restrictions are not permitted on Arterial/Collector streets during peak traffic hours (6:00 a.m. to 8:30 a.m. and 4:00 p.m. to 6:30 p.m. weekdays). Outside of these hours the following applies:

Arterial Streets

Minimum number of travel lanes to be open to through traffic:

- a. If more than four lanes exist:.....Two will be open each way;
- b. If four or less lanes exist:One will be open each way
- c. On one-way streets:.....Two lanes open

At signalized intersections, a minimum of four lanes (two each way) plus left-turn lanes will be maintained open from 8:30 a.m. to 4:00 p.m., and from 6:30 p.m. to 6:00 a.m., Monday through Fridays including weekends unless otherwise noted within the approved TRACS permit issued to the contractor.

Collector Streets

A minimum of two travel lanes (one each way) will be open to through traffic.

At signalized intersections, a minimum of two lanes (one each way) plus left-turn lanes will be maintained open from 8:30 a.m. to 4:00 p.m., and from 6:30 p.m. to 6:00 a.m., Monday through Fridays including weekends unless otherwise noted within the approved TRACS permit issued to the contractor.

Pre-construction Field Meeting

Prior to requesting a TRACS Permits, the Contractor must coordinate in advance with the construction inspector to schedule a pre-construction field visit. The following personnel shall attend the meeting: Contractor, contracted barricade company, construction inspector and right-of-way inspector.

Nighttime Regulations

To minimize disruption to traffic, crews may be requested to work at night during off-peak hours. In this case, an after-hours permit will be required to authorize work in residential areas. Permits may be granted for up to 30 days for hours including nights, weekends, and holidays and are issued under Phoenix City Code 23-14 for building and roadway construction by the Planning and Development and Street Transportation departments, respectively. The purpose of the permits is to authorize work yet minimize loud and disturbing noises in residential areas due to construction or maintenance activities.

Variable Message Boards

Variable Message Boards (VMB) shall be provided on this project, 24 hours per day, from up to 10 days prior to any roadway closures and from at least 5 days prior to; maintaining a single thru lane at a signalized intersection, restricting left turn movement or 24-hour lane restrictions. The VMB shall remain in place until all roadway traffic restrictions are removed or approval from the area Right-of-Way Inspector.

Special Sign Requirements

The Contractor shall provide, install and maintain advance notification, public informational and directional access signs (for businesses, churches, hospitals, schools, etc.) that may be required by the Engineer. These signs may include, but are not limited to, portable changeable message signs, radar/speed sensing trailers, and other applicable Intelligent Transportation System type devices. The cost shall be included in the bid item for Traffic Control Devices.

No Parking Signs

When used, temporary NO PARKING signs must be placed 72 hours in advance for notification.

Signs should be spaced 80 feet apart for collector and arterial streets. On local Streets, a minimum of one (1) sign must be placed in front of each affected resident not to exceed 80 feet.

Signs must be clearly marked with "Date" to "Date" and the time period of the no parking.

NO PARKING Signs must be new and not reused, dates and times must be legible.

Contractor must provide Parking enforcement a picture of the placement of the no parking sign with a date and time stamp on the picture.



1.500" Radius, 0.375" Border, 0.375" Indent, Red on White;
 "TEMPORARY" B; "NO" B; "PARKING" B;
 "DATE TO DATE" B; "TIMES(S)" B;

Police Officer Requirements

Off-duty police officers are required for construction projects as defined in the most recent edition of the City of Phoenix Traffic Barricade Manual and TRACS permit. The Contractor must competitively procure off-duty police with vendors who are Authorized Traffic Coordinators with the City of Phoenix Police Department or Phoenix Police Department off-duty detail.

The following requirements must be included in the procurement:

1. Hourly fees charged
2. Administrative fees (administrative fees to be charged as a part of the hourly rate, not billed separately)
 - a. Pay applications requesting reimbursement for Off Duty Police hours worked will be accompanied with itemized documentation indicating officer name, date worked, hours worked, time of day worked and location.
 - b. For audit purposes, contractor's files will contain documentation from the successful off duty vendor that the above items are accounted for in the vendor's price proposal.

The Contractor shall provide one off-duty police officer, as defined in the City of Phoenix Traffic Barricade Manual, at signalized intersections affected from 6:00 a.m. to 6:30 p.m. weekdays, and

during working hours nights and weekends when traffic is restricted (as described in the Traffic Barricade Manual).

When construction activities do not restrict traffic through the intersections, police officer hours may be reduced or suspended at the direction of the ROW Inspector.

Signalized Intersection Requirements

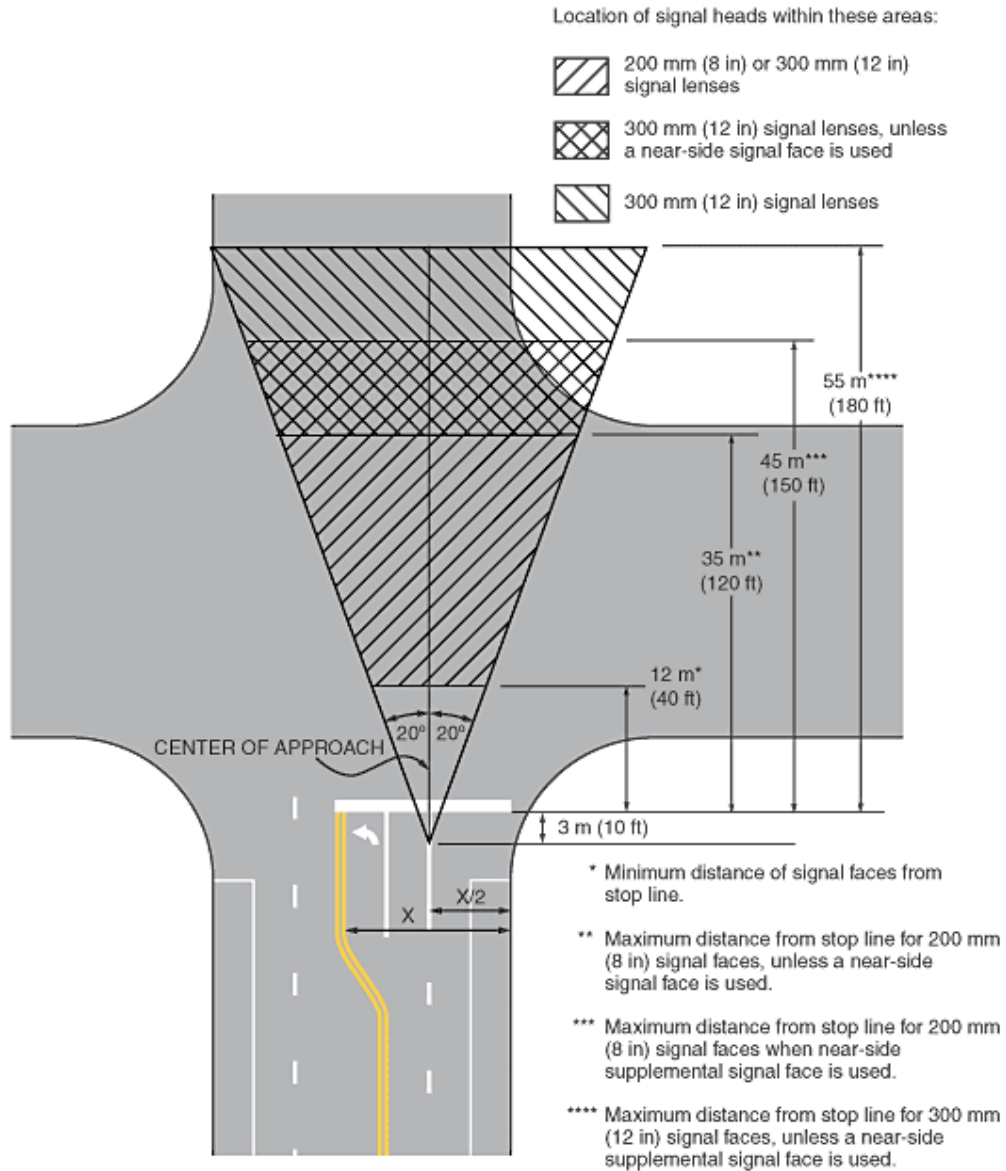
When left turns are prohibited at signalized intersections with left-turn arrow indications or when working in vicinity of a signalized intersection, the contractor will coordinate with the project inspector five days in advance and provide a written schedule indicating days, times and specific locations where left turns will be prohibited or where signals will be interrupted. The project inspector will notify the City Traffic Signal Shop (phxtmc@phoenix.gov) at least 72 hours in advance to make arrangements for arrow indications to be turned off or to coordinated signals being affected by the construction.

The contractor shall maintain the project inspector informed of any schedule changes or when work will be completed. When the work has been completed the inspector will immediately notify Traffic Signal Shop (phxtmc@phoenix.gov) so they can reactivate the left-turn arrow.

Traffic Signal Head Visibility Requirements

The contractor shall maintain a "40-degree Cone-of-Vision" at all intersections, for full view of the intended traffic. If during construction, traffic will be positioned in such a manner that the driver cannot see a minimum of two (2) traffic signal head indications within 20-degrees either side of straight ahead (40-degree Cone-of-Vision), immediately contact the Signal Engineer at 602-262-4693 prior to the start of any work.

Figure 4D-2. Horizontal Location of Signal Faces



Note: This figure illustrates the horizontal location of signal faces.

Local Access Requirements

The Contractor shall maintain local access to all side streets, access roads driveways, alleys, and parking lots at all times and shall notify residents 72 hours in advance of any restrictions which will affect their access. The Contractor shall restore the access as soon as possible. If the primary access cannot be restored in a timely manner, the Contractor shall provide an alternative which shall be pre-determined with the residents prior to imposing any restrictions. Any local street restrictions imposed shall be such that local area traffic circulation is maintained.

Business Access Requirements

Access shall be maintained to adjacent businesses at all times during their hours of operation. Access may be maintained by such measures as constructing driveways in half sections, or by providing bridging over new concrete. Properties with multiple driveway access will not have more than one driveway access restricted at any given time. While the one driveway is restricted, access to the other adjacent driveways will be maintained and unrestricted. Access to adjacent driveways shall be provided during all non-working hours. Any business restrictions shall be coordinated with the affected business in writing at least fourteen (14) days prior to imposing restrictions.

Pedestrian Access Requirements

The Contractor shall ensure that all sidewalks on this project remain in compliance with all the issues outlined by the American Disabilities Act of 1990. All pedestrian-walking areas, whether paved or unpaved, shall be maintained open and safely or a suitable pedestrian detour route will be provided. Such measures as backfilling or ramping at a 12:1 slope to existing sidewalks, or providing alternate sidewalk areas adjacent to existing sidewalks may be used. Right-of-Way inspector may also request an ADA/Pedestrian plan for any proposed sidewalk restrictions or closures. In high pedestrian use areas, the Engineer may request temporary hard-surface walkways, and/or covered pedestrian walkways to be installed at no additional cost to the City.

Frontage Road Access Requirements

Local access shall be maintained at all times on frontage roads. Frontage roads shall not be used for through traffic, equipment parking, material storage, or spoil stockpile area. Frontage road closures shall follow the same special provisions as described in "Local Access Requirements".

School Access Requirements

The Contractor shall provide clean and safe school zones, crosswalks, and walkways for students attending nearby schools during all hours of school use.

This may require backfilling trenches, temporary pavement, shoring, plating, or pedestrian bridges with handrails across open trenches.

In addition to school zones and crosswalks, the Contractor shall maintain accessibility to all school bus routes during all hours of school use. The Contractor shall notify the school Principal(s) and the school Transportation Director at least fourteen (14) days prior to any restrictions, and shall restore access as soon as possible.

Church Access Requirements

The Contractor shall maintain a high level of access to churches during all hours of church use. The Contractor shall coordinate any access restrictions with the clergy at least fourteen (14) days prior to any restrictions, and shall restore access as soon as possible.

Hospital Access Requirements

The Contractor shall maintain the Emergency entrance to nearby Hospitals by way of a paved lane for emergency vehicles at all times for the duration of the project. The Contractor shall coordinate any access restrictions with the hospital administrator at least fourteen (14) days prior to any restrictions, and shall restore access as soon as possible.

Fire Station Access Requirements

The Contractor shall maintain emergency vehicle access to and from the fire station at all times. The Contractor shall coordinate with the Fire Station Commander at least seven days prior to any restrictions and shall restore access as soon as possible.

Police Station Access Requirements

The Contractor shall maintain emergency vehicle access to and from nearby police stations at all times. The Contractor shall coordinate with the Police Station Commander at least seven days prior to any restrictions and shall restore access as soon as possible.

City Park Access Requirements

The Contractor shall maintain access to nearby parks during park hours. Any restrictions shall be coordinated with the appropriate Parks District Supervisor at least seven days in advance, and full access shall be restored as soon as possible.

Recreational Trail Crossing

The Contractor shall maintain the trail crossings safely open at all times, and shall maintain all special trail signs required.

Canal Access Road Requirements

Canal access and maintenance roads shall remain open at all times.

Any work that may affect this project shall be coordinated with the appropriate Agency contact at least 14 working days in advance.

Coordination With Other Agency Projects

The Contractor will coordinate and schedule work to minimize disruption or conflicts with the following other Agency projects:

Sanitation Pick-up

The Contractor shall provide sanitation pick-up for affected residents by relocating trash containers, or by providing alternative measures acceptable to the Sanitation Division of the City Public Works Department (602-256-3310).

Special Events

Should there be special events scheduled to take place during the construction of this project, it is the responsibility of the Contractor to coordinate their Construction schedule around the special event. No compensation for delays associated with special events will be considered.

Bus Stops

The Contractor shall maintain all existing bus stop locations on this project in a safe manner, or provide alternate bus stop locations and related directional signage as required by the Inspector. Relocation of bus stops shall be coordinated through the area . Relocation of bus stops shall be coordinated through the City of Phoenix Public Transit Department, contact 602-534-6284 or 602-262-4087.

Flagging of Traffic

No flagging of traffic will be permitted during the peak traffic hours of 6:00 a.m. to 8:30 a.m. and

4:00 p.m. to 6:30 p.m. weekdays. If construction requires, intermittent flagging will be allowed from 8:30 a.m. to 4:00 p.m., if approved by City project inspector, to facilitate access for heavy construction equipment.

Traffic Control Plans

The Contractor shall submit a traffic control plan for approval, showing placement of all traffic control devices, including all conflicting signs to be covered/removed or relocated, or other features that may conflict with the placement of temporary signage. This plan shall be professionally drawn on a reproducible medium, and shall be submitted to the Engineer two (2) weeks prior the contract start time or at the Pre-Construction conference, whichever occurs first.

Holiday Season Requirements

Restrictions near retail shopping areas on Major or Collector streets during the Holiday Season from November 23rd to January 1st will not be approved without pre-approval from the RMP Inspector. Contractor shall plan and coordinate their work schedule around this holiday season requirement.

Temporary Traffic Control Zone and Safety

At the Pre-Construction conference, the Contractor will designate an employee, other than the Project Superintendent, who is knowledgeable in the principles and methods of proper traffic control and safety. This employee will be available on the project site during all periods of construction to coordinate and maintain safe, acceptable and effective temporary barricading whenever construction affects traffic. This person will be authorized to receive and fulfill instructions from the Engineer and will supervise and direct traffic control. Instructions and information given by the Engineer to this person will be considered as having been given to the Contractor.

Failure to maintain temporary traffic control devices in accordance with the City of Phoenix Traffic Barricade Manual, latest edition, the approved Traffic Control Plan, and directives by the Engineer will result in suspension of work and/or civil sanctions until deficiencies are corrected to the satisfaction of the Engineer.

Safety Fencing Requirement for Trenches and Excavations

The Contractor will provide safety construction fencing around all open trenches and excavations during all non-working hours.

The Contractor will provide for the safety and welfare of the general public by adequately fencing all excavations and trenches that are permitted by the Engineer to remain open when construction is not in progress.

Fencing will be securely anchored to approved steel posts located six feet on centers, having a minimum height of six feet, and will consist of wire mesh fabric of sufficient weight and rigidity to adequately span a maximum supporting post separation of six (6) feet.

The fencing, when installed about the periphery of excavations and trenches, will form an effective barrier against intrusion by the general public into areas of construction. Fencing will not create sight distance restrictions or visual obstructions. At all times when construction is not in progress, the Contractor will be responsible for maintaining the fencing in good repair, and upon notification by the Engineer, will take immediate action to rectify any deficiency. Prior to the start of any excavating or trenching required for the execution of the proposed work, the Contractor will submit to the Engineer for approval, detailed plans showing types of materials and methods of fabrication for the protective fencing.

There will be no separate measurement or payment for furnishing, installing, or maintaining protective fencing. The cost will be considered incidental to the cost of the pipe and/or structures.

15. **401 TRAFFIC CONTROL**, Add the following to **Subsection 401.10 PAYMENT**:

ALLOWANCE FOR UNIFORMED, OFF-DUTY LAW ENFORCEMENT OFFICER

This project includes a lump sum "ALLOWANCE FOR UNIFORMED, OFF-DUTY LAW ENFORCEMENT OFFICER. The amount of this allowance is determined by the Engineer, and is not subject to individual bid pricing. All bidders shall incorporate the amount pre-entered in the bid proposal and shall reflect the same in the total amount bid for this project.

Payment for uniformed, off-duty law enforcement officers shall be made from this allowance based on approved invoiced cost plus taxes, and a maximum 10 percent markup for overhead and profit.

16. Add the following new **Section 402 ADDITIONAL CONSTRUCTION REQUIREMENTS** as follows:

402.1 FIELD DOCUMENTATION

The Contractor shall document existing conditions within the project area prior to construction. Documentation shall be video recording. The video recording shall not be made from a moving vehicle. One copy of the video recording shall be furnished to the City prior to the start of construction. The cost of the video recording shall be considered incidental to the cost of the project.

Additionally, the contractor shall identify and provide the City with a detailed log of any damage found on existing walls and fences adjacent to the alleys prior to the start of subgrade preparation.

No Separate measurement or payment shall be made for this item.

402.2 CONTRACTOR COMMUNICATION INFORMATION

The Contractor shall provide a pager and mobile phone to his on-site Project Superintendent to ensure that the Engineer can reach the Contractor's Superintendent. This pager and mobile phone must be accessible by local land-line telephone service. The Superintendent's pager and mobile phone shall remain in service for the duration of the project, and these phone numbers shall be included on the Contractor's list of emergency phone numbers submitted at the pre-construction conference.

402.7 POWER BROOM

The Contractor may be instructed by the Engineer to provide additional pavement cleaning (in parking lots, or other locations) above and beyond the normal expected cleanup and dust control required by MAG Section 104.1.3. If requested by the Engineer, the Contractor shall clean the requested areas with a power pick-up broom.

Use of the power pick-up broom in the special requested areas only shall be measured and paid for on an hourly basis under the bid item, 'POWER BROOM'. The number of hours listed in the bid proposal is only an estimate. Actual hours requested for this project may vary.

17. **430 LANDSCAPING AND PLANTING**, Add the following to **COP Supplement to MAG Subsection 430.14 CLEANUP AND PRETECTION**:

The Contractor shall restore the work area to as good or better condition as before construction began. In addition, the Contractor shall repair or replace, in kind, any plant; geologic, natural, or man-made features disturbed or destroyed during the construction operations within or outside the limits of the project to the satisfaction of the Engineer.

The Contractor shall keep a daily log of all activities on the project.

430 LANDSCAPING AND PLANTING, Delete **COP Supplement to MAG Subsection 430.15 MEASUREMENT AND PAYMENT** and replace with the following:

There will be no measurement and payment for Landscaping and Planting.

18. Add the following new Section 434 ADDITIONAL LANDSCAPING REQUIREMENTS as follows:

434 TREATMENT AND PROTECTION OF EXISTING TREES AND/OR SHRUBS IN PLACE

434.3 TRIMMING EXISTING TREES AND/OR SHRUBS IN PLACE

Where there are existing trees to remain in place, the Contractor is to perform any trimming operation required to maintain pedestrian clearance to a height of 7' and to maintain sight visibility. Trimming which involves removal of branches over 3" in diameter or removal of branches which will alter the structure of the trees shall be done by a person trained and Certified in the Practice of Arboriculture. The arborist shall present certification papers to the Engineer and Landscape Architect for approval upon request. If the tree(s) become damaged or disfigured as a result of the trimming, the Engineer and Landscape Architect may require that the tree(s) be removed and replaced in size and kind by the Contractor. Removal and replacement shall be done at the Contractor's expense.

Trimming existing trees and shrubs in place includes trimming of branches or foliage which overhang existing walls or fences where the branches create a problem for pedestrian clearance or for visibility. Trimming of existing trees shall be done according to plans as noted and as directed by the Engineer and Landscape Architect.

There will be no separate measurement or payment for trimming existing trees in place. The cost of the work shall be considered incidental to the cost of the project.

434.4 PRUNING ROOTS OF EXISTING TREES

If construction impacts the roots, trunk or branches of existing trees that are designated to remain in place, the Contractor shall take all necessary precautions to ensure the survival and protection of the tree. The Contractor shall hire a Certified Arborist to investigate the areas surrounding existing trees to be saved in place, and locate existing roots. Existing roots shall be excavated by hand, and hand-pruned as necessary to where the root is healthy. The Arborist shall also make necessary recommendations for care of the tree(s) with respect to root feeding, fertilizing, or any other items required to ensure survival.

The Arborist shall present certification papers for approval by the Engineer and Landscape Architect upon request.

There will be no separate measurement or payment for root pruning. The cost shall be considered incidental to the cost of the project.

434.5 PROVIDE PROTECTION FOR EXISTING TREES

The Contractor shall be responsible for protecting existing trees to remain in place as tagged in the field and/or as noted on the plans. The Contractor shall provide fencing around all trees and plants which are to remain in place that could be damaged by construction activity or equipment. A minimum area shall be established around each plant based on its trunk caliper size. The minimum area shall be one (1) foot of radius for each inch of caliper. For example, if a tree has a 6" caliper, there shall be a minimum 6' radius area around the tree that shall be considered a protected zone,

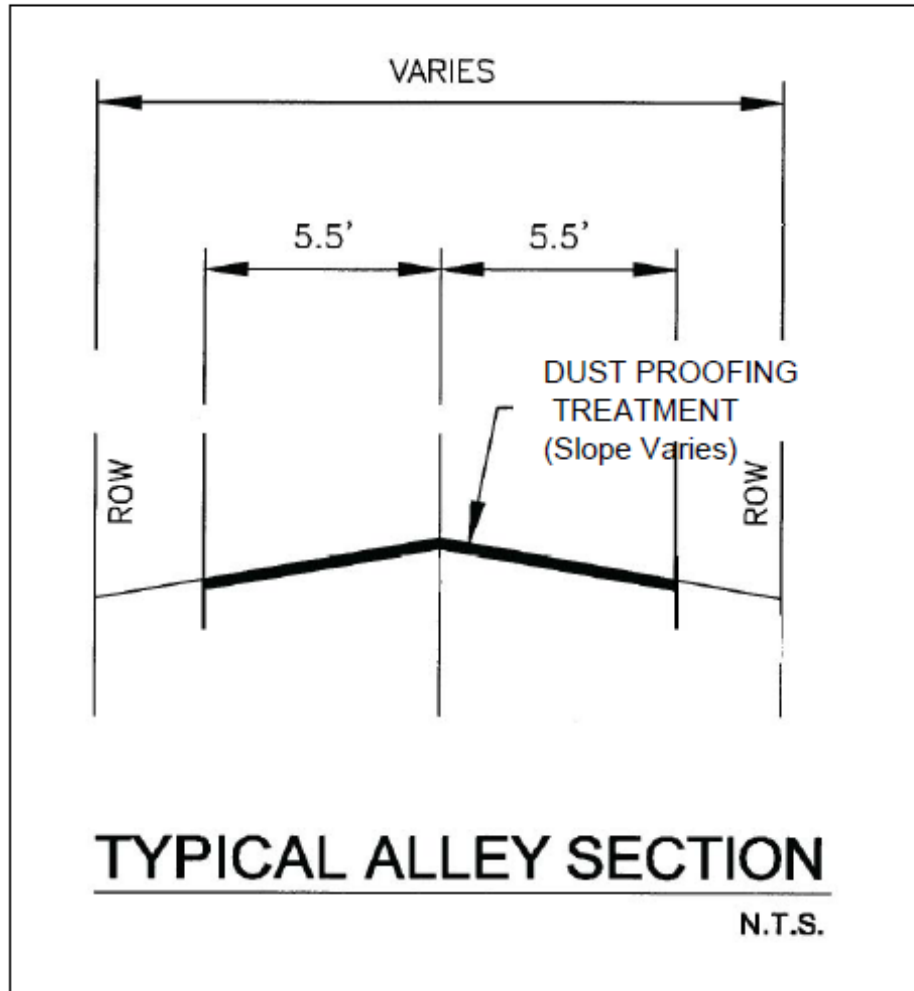
and a fence shall be placed at that location. The fencing shall provide protection to the trunks and limbs from damage that could be caused by construction activity or equipment.

Any trimming that is necessary to prevent construction damage to existing trees shall be pre-approved by the Landscape Architect. If the roots of existing trees could be affected in any way by construction they shall be hand excavated and trimmed as described in the Special Provision, "PRUNING ROOTS OF EXISTING TREES". Root pruning shall also be pre-approved by the Landscape Architect.

The Contractor shall be responsible for all costs associated with protection of existing trees in place. If any damage occurs to trees or other plants to remain that, in the opinion of the Engineer and Landscape Architect, destroys, aesthetically disfigures, or threatens the plant's future survival, the Contractor shall be responsible for replacing the tree in kind. Replacement trees shall be the same size as the damaged tree. Prior to selection of any replacement tree, the Contractor shall obtain approval of the size, type and purchase source from the Engineer and Landscape Architect.

There will be no separate measurement or payment for providing protection for existing trees and plants in place. The cost shall be considered incidental to the cost of the project.

TYPICAL ALLEY CROSS SECTION



**0000 MA PHX T0397 01C
PHX-0(372)D
Pave Dirt Alleys in Phoenix**

ENVIRONMENTAL COMMITMENTS

The following shall be included in the project special provisions:

- I. **“The project mitigation measures are not subject to change without written approval from ADOT Environmental Planning. The Contractor shall follow all the requirements of the permits specified herein and comply with the project specifications.”**

The following contractor’s mitigation measures, permits and guidelines (as applicable) shall be included in the project special provisions:

- II. **Project Mitigation Measures:**

City of Phoenix Responsibilities:

- **Landscaped trees or other structures in the project area may provide habitat for active nests protected under the Migratory Bird Treaty Act. The potential for active nests is increased between February 1 and August 31 of any calendar year. Mature trees/shrubs with active nests will be avoided.**
- **The attached Western burrowing owl and Migratory Bird Treaty Act will be incorporated into the bid documents and provided to the contractor, subcontractors, and all field personnel at the preconstruction meeting.**

Contractor Responsibilities:

- **To prevent the introduction of invasive species seeds, all earthmoving and hauling equipment shall be washed prior to entering the construction site and the contractor shall inspect all construction equipment and remove all attached debris, including plant parts, soil and mud, prior to the equipment entering the construction site.**
- **To prevent invasive species seeds from leaving the site, the contractor shall inspect all construction and hauling equipment and remove all debris, including plant parts, soil and mud, prior to leaving the construction site.**
- **The contractor shall maintain the work area free from weeds and intruding grasses without additional cost to the project, regardless of application of weed control substances and/or applications of pre and post emergent herbicides.**

Contractor Responsibilities (continued):

- **Landscaped trees or other structures in the project area may provide habitat for active nests protected under the Migratory Bird Treaty Act. The potential for active nests is increased between February 1 and August 31 of any calendar year. Mature trees/shrubs with active nests will be avoided.**
- **If trees or shrubs would be impacted between February 1 and August 31 of any calendar year, or if an active bird nest is present within 30 feet of the work area, work shall cease within 30 feet and the Street Transportation Department Environmental Programs Coordinator (James Marshall, 602-534-3747) shall be notified immediately and allowed time to make appropriate arrangements.**
- **If burrowing owls or potentially active burrows (natural or manmade holes 3 inches in diameter or greater) are observed during construction, work shall cease within 100 feet and the Office of the City Engineer Environmental Services Section shall be notified immediately and allowed time to make appropriate arrangements.**
- **The contractor shall post the Migratory Bird Treaty Act and Western burrowing owl flyers at the construction site at all times during construction.**
- **If hazardous materials are suspected or found within the project area, the contractor shall contact the City of Phoenix Engineer.**

III. Guidelines:

- Western Burrowing Owl Awareness Flyer



Credit: DesertUSA.com/animals/cliff-swallow.html



City of Phoenix
STREET TRANSPORTATION DEPARTMENT

Migratory Bird Treaty Act

(Applies to many birds in Phoenix)

The purpose of this flyer is to provide City of Phoenix employees and contractors with basic knowledge to reduce the risk of impacting species protected by the Migratory Bird Treaty Act.

Migratory Bird Treaty Act (MBTA)

Under the Migratory Bird Treaty Act of 1918, as amended, listed birds and their parts (including eggs, feathers, and nests) are fully protected. They are also protected under Arizona State Law, Title 17-101, Title 17-235, and Title 17-236. The MBTA states that it is illegal to:

- Pursue, hunt, take, capture, kill, possess, sell, purchase, barter, import, export, or transport any migratory bird, or any part, nest, or egg of any such bird.
 - 'Take' is defined as to "pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect."

More information regarding the MBTA can be found at:

- <http://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>
- <https://www.fws.gov/laws/lawsdigest/migtrea.html>

Where/When are they active?

- The nests of birds protected by the MBTA can be found in many places, including trees, shrubs, cacti, cattails, on the ground, in holes in the ground and on man-made structures including culverts, bridges, buildings, etc.
- The breeding cycle of most birds in Phoenix occurs between February 1 and August 31, although there are a few species that may nest outside that period. Some birds may be present year-round and others migrate, often during the late summer/early autumn period.

How to avoid impacting birds protected by the MBTA:

- If your project might impact active bird nests/burrows, work with one of the contacts below during the design process to make appropriate arrangements before the project activity begins. Necessary actions may include active nest surveys, seasonal restrictions, or obtaining a project-specific relocation permit from the U.S. Fish and Wildlife Service.
- When actively working, be aware of your surroundings. If you see a nest that appears active (chirping, aggressive or distracting adult bird behavior, eggs present, etc.) **STOP WORK** within 30 feet of the area and call one of the contacts below.

Questions? Work may impact birds protected by the MBTA? Contact a City of Phoenix Street Transportation Department Environmental Quality Specialist:

Andrea Love 602-495-6718 or via e-mail at <andrea.love@phoenix.gov>

Greta Halle 602-534-6030 or via e-mail at <greta.halle@phoenix.gov>

Updated November 18, 2019



City of Phoenix
STREET TRANSPORTATION DEPARTMENT

Western Burrowing Owl

(Athene cunicularia)

The purpose of this flyer is to provide City of Phoenix employees and contractors working on City projects with basic knowledge to reduce the risk of impacting western burrowing owls.

Legal Status:

The western burrowing owl is protected under the Migratory Bird Treaty Act of 1918, as amended. All migratory birds and their parts (including eggs, feathers, and nests) are fully protected. They are also protected under Arizona State Law, Title 17-101, Title 17-235, and Title 17-236.

Species Description:

- Small, ground-dwelling owl (mass of approx. 5 oz.)
- Length: 7.6-9.9 inches, with long legs
- Wingspan: approx. 23 inches
- Round head, lacks ear tufts
- Distinct oval facial ruff, framed by a broad, puffy white eyebrow
- Bright yellow iris

Where are they found?

- Dry, open, short grass, treeless plains
- Human dominated landscapes such as:
 - Golf courses, airports
 - Agricultural fields, vacant lots
- Depends on other animals to construct burrows

Identifying an active burrow

- Western burrowing owls use burrows constructed by ground squirrels, badgers, coyotes, tortoises, etc., or may use pipes, culverts, and ditches.
- They may “decorate” the entrance to a burrow with cow, horse, or dog manure, feathers, vegetation, and trash items
- An active burrow may (not always) have owl excrement (“whitewash”) and/or pellets near the entrance

How to avoid impacting western burrowing owls:

- Scan ahead as you work
- ***If western burrowing owls or potentially active burrows observed, STOP WORK and MOVE at least 100 feet away from the owl or occupied burrow before resuming work***
 - Do not harass or “shoo” the owl away
- If the project cannot avoid or stay outside 100 feet of the owl or active burrow, call contact listed below

Questions? Need to work within 100 feet of a western burrowing owl or active burrow? Contact a City of Phoenix Street Transportation Department Environmental Quality Specialist:

Andrea Love 602-495-6718 or via e-mail at <andrea.love@phoenix.gov>

Greta Halle 602-534-6030 or via e-mail at <greta.halle@phoenix.gov>

Sources: Arizona Department of Transportation Environmental Planning Group Western Burrowing Owl Awareness Flyer
Arizona Game and Fish Department Animal Abstract: Western Burrowing Owl. Heritage Data Management System

Updated November 18, 2019



Credit: AGFD



City of Phoenix
STREET TRANSPORTATION DEPARTMENT

Sonoran Desert Tortoise

(Gopherus morafkai)

The purpose of this flyer is to provide City of Phoenix employees and contractors working on City projects with basic knowledge to reduce the risk of impacting Sonoran Desert tortoise.

Legal Status:

The Sonoran Desert tortoise is a Tier 1A Species of Greatest Conservation Need in the State of Arizona, as defined by the Arizona Game and Fish Department (AGFD) and is a Candidate Species under the Endangered Species Act.

Species Description:

- Length: 8-15 inches
- Bottom shell yellowish and not hinged
- Hind limbs stocky and elephantine
- High-domed, brownish shell with a pattern and prominent growth lines
- Flattened forelimbs for digging, covered with conical scales

Where are they found?

- Rocky, steep slopes and lower mountain slopes
- Native desert scrubland
- Between 904 and 4,198 feet in elevation
- Washes and valley bottoms may be used in dispersal

Where are they active?

- Sonoran Desert tortoise spend the bulk of time in burrows, which provide protection from heat and cold
- Emerge from burrows on rocky slopes, desert scrub or grassland to feed, bask and breed, mostly during the monsoon season

How to avoid impacting Sonoran Desert tortoise:

- Scan ahead as you work
- ***If Sonoran Desert tortoise observed, STOP WORK, call the contact below and allow the tortoise to leave under its own power***
- Do NOT pick up or handle the Sonoran Desert tortoise unless the tortoise is in imminent danger. Improper handling can result in tortoise death. If a tortoise must be moved, strictly adhere to the following AGFD guidelines (rev. 9/22/2014): <https://s3.amazonaws.com/azgfd-portal-wordpress/PortalImages/files/wildlife/2014%20Tortoise%20handling%20guidelines.pdf>.
- When working in Sonoran Desert tortoise habitat, check for tortoises under parked vehicles before driving

Questions? Concerns? Think your project will impact Sonoran Desert tortoise? Contact the City of Phoenix Street Transportation Department, Environmental Services:

Andrea Love 602-495-6718 or via e-mail at <andrea.love@phoenix.gov>

Greta Halle 602-534-6030 or via e-mail at <greta.halle@phoenix.gov>

CONSTRUCTION CONTRACTS DBE PROVISIONS

** FOR USE ON LPA FEDERAL AID PROJECTS WITH GOALS. **
* NOTE: REFER TO EDITING INSTRUCTIONS IN SECTIONS 12.0 AND 17.0 *

(LPA EPRISE, 07/01/2017)

DISADVANTAGED BUSINESS ENTERPRISES:

1.0 Policy:

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Department to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program and;
7. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined herein in USDOT-assisted contracts. The Department encourages contractors to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

Local Public Agencies (LPA) and or Subrecipients of Federal financial assistance have adopted ADOT's DBE Program Plan, adhere to the Department's DBE policy and will administer and manage the contracts from advertising, consultant selection, negotiation, contract execution, processing payment reports and contract modifications, audits, DBE compliance (e.g., reporting and monitoring) through contract closeout.

2.0 Assurances of Non-Discrimination:

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. 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 such other remedy as the LPA/Subrecipient, with the Department's concurrence, deems appropriate, which may include, but not limited to:

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

The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

- (A) Commercially Useful Function (CUF):** Commercially Useful Function is defined fully in 49 CFR 26.55 which definition is incorporated herein by reference.
- (B) Committed DBE:** A DBE that was identified by the contractor, typically on a DBE Affidavit, to meet an assigned DBE goal as a condition of contract award and performance, and includes any substitute DBE that has subsequently been committed work to meet the assigned contract goal.
- (C) Disadvantaged Business Enterprise (DBE):** a for-profit small business concern which meets both of the following requirements:
- (1) 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 is owned by one or more such individuals; and,
 - (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (D) Joint Check:** a two-party check between a subcontractor, DBE and/or non-DBE, a prime contractor and the regular dealer of material supplies.
- (E) 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 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.

(F) NAICS Code: The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the US business economy.

(G) Non-DBE: any firm that is not a DBE.

(H) Race Conscious: a measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

(I) Race Neutral: a measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race neutral includes gender-neutrality.

(J) Small Business Concern: a business that meets all of the following conditions:

- (1) Operates as a for-profit business;
- (2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;
- (3) Is independently owned and operated;
- (4) Is not dominant in its field on a national basis; and
- (5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.

(K) Socially and Economically Disadvantaged Individuals: any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) 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 enrolled members of a federally or State recognized Indian tribe, Alaskan Natives 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 Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction program. All bidders should contact the Department's Business Engagement and Compliance Office (BECO) by phone, through email, or at the address shown below, for assistance in their efforts to use DBEs in the highway construction program of the Department. BECO contact information is as follows:

Arizona Department of Transportation
Business Engagement and Compliance Office
1801 W. Jefferson Street, Room 101, Mail Drop 154A
Phoenix, AZ 85007
Phone (602) 712-7761
FAX (602) 712-8429
Email: contractorcompliance@azdot.gov
Website: www.azdot.gov/bec

4.01 Mentor-Protégé Program:

ADOT has established a Mentor-Protégé program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program encourages prime contractors to provide certain types of assistance to certified DBE subcontractors. ADOT encourages contractors and certified DBE subcontractors to engage in a Mentor-Protégé agreement under certain conditions. Such an agreement must be mutually beneficial to both

parties and to ADOT in fulfilling the requirements of 49 CFR Part 23. For guidance regarding this program, refer to the Mentor-Protégé Program Guidelines available on the BECO website.

The Mentor-Protégé program is intended to increase legitimate DBE activities. But the program does not diminish the DBE rules or regulations, and participants may not circumvent these rules.

5.0 Applicability:

ADOT has established an overall annual goal for DBE participation on Federal-aid contracts. ADOT intends for the goal to be met with a combination of race conscious and race neutral efforts. Race conscious participation occurs where the contractor uses a percentage of DBEs, as defined herein, to meet the contract-specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, describes race neutral participation as when a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

The contractor shall meet the goal specified herein with DBEs, or establish that it was unable to meet the goal despite making good faith efforts to do so. Prime contractors are encouraged to obtain DBE participation above and beyond any goals that may be set for this project.

The DBE provisions are applicable to all bidders including DBE bidders.

6.0 Certification and Registration:

6.01 DBE Certification:

Certification as a DBE shall be predicated on:

- (1) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".
- (2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.
- (3) The submission of any additional information which the Department may require to determine the firm's eligibility to participate in the DBE program.
- (4) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed online with the Department or one of its Unified Certification Program (UCP) partner agencies at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at <http://www.azutracs.com>.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

ADOT is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at <http://www.azutracs.com/>. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The Department's certification of a DBE is not a representation of qualifications and/or abilities; only that the firm has met the criteria for DBE certification as outlined in 49 CFR Part 26. The contractor bears all risks of ensuring that DBE firms selected by the contractor are able to perform the work.

6.02 SBC Registration:

To comply with 49 CFR Part 26.39, ADOT's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for-profit businesses authorized to do business in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

While the SBC component of the DBE program does not require utilization goals on projects, the Department and the LPA/Subrecipient encourages contractors to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement. The contractor may use the AZ UTRACS website to search for certified DBEs and registered SBCs that can be used on the contract. However, SBCs that are not DBEs will not be counted toward the DBE contract goal.

SBCs can register online at the AZ UTRACS website. The registration of SBCs is not a representation of qualifications and/or abilities. The contractor bears all risks of ensuring that SBC firms selected by the contractor are able to perform the work.

7.0 DBE Financial Institutions:

ADOT thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. ADOT encourages prime contractors to use such institutions on USDOT assisted contracts. However, use of DBE financial institutions will not be counted toward the DBE contract goal.

ADOT and the LPA/Subrecipient encourages prime contractors to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived

from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

9.0 Computation of Time:

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. In circumstances where the LPA/Subrecipient Procurement Office is closed for all or part of the last day, the period extends to the next day on which the LPA/Subrecipient Procurement Office is open.

10.0 Contractor and Subcontractor Requirements:

10.01 General:

The contractor shall establish a DBE program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

10.02 DBE Liaison:

The contractor shall designate a DBE Liaison responsible for the administration of the contractor's DBE program. The name of the designated DBE Liaison shall be included in the DBE Intended Participation Affidavit Summary.

11.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all contractors and subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects this information through a Bidders/Proposers List when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at <http://www.azutracs.com/> a centralized database for companies that seek to do business with ADOT and the LPA/Subrecipient. This information will be maintained as confidential to the extent allowed by federal and state law.

Prime contractors and all subcontractors, including DBEs, must be registered in AZ UTRACS. Bidders may verify that their firm and each subcontractors is registered using the AZ UTRACS website.

Bidders may obtain additional information at the AZ UTRACS website or by contacting the LPA/Subrecipient.

Bidders shall create the Bidders/Proposers List in the AZ UTRACS by selecting all subcontractors, service providers, manufacturers and suppliers that expressed interest or submitted bids, proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subcontractors, service providers, manufacturers and suppliers regardless of the bidders' intentions to use those firms on the project.

All bidders must complete the Bidders/Proposers List online at AZ UTRACS whether they are the apparent low bidder or not. A confirmation email will be generated by the system. The bidders shall submit to the LPA/Subrecipient a copy of the email confirmation no later than 4:00 p.m. on the fifth calendar day following the bid opening. Faxed copies are acceptable.

FAILURE TO SUBMIT THE REQUIRED BIDDERS/PROPOSERS LIST TO THE LPA/SUBRECIPIENT PROCUREMENT OFFICE BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE BIDDER BEING DEEMED INELIGIBLE FOR AWARD OF THE CONTRACT.

12.0 DBE Goals:

The minimum goal for participation by DBEs on this project is as follows:

0 Percent

The percentage of DBE participation shall be based on the total construction bid.

13.0 Submission with Bids:

All bidders are required to certify in their bid proposal on the "Disadvantaged Business Enterprise Goal Assurance" certificate either:

- (1) The bidder has met the established DBE goal and arrangements with certified DBEs have been made prior to the submission of the bid, or
- (2) The bidder has been unable to meet the established DBE goal prior to the submission of the bid and has made good faith efforts to do so.

For the purpose of this section, 'arrangements' means, at a minimum, agreement between the bidder and the certified DBE, either written or oral, on unit prices and scope of work.

This certificate may not be revised or corrected after submission of the bid. If the bidder certifies that it has met the goal, the bidder cannot change its position after submission of the bid and submit documentation of a good faith effort. If the bidder certifies that it has been unable to meet the goal and has made a good faith effort, the bidder cannot change its

position after submission of the bid and claim to have met or be able to meet the established goal.

Bids submitted with altered, incomplete or unsigned certificates will be considered non-responsive. Bids submitted with certifications on forms other than those furnished by the LPA/Subrecipient Procurement Office will be considered non-responsive.

Certifications on forms other than those furnished by the LPA/Subrecipient will be considered non-responsive.

14.0 Bidder Meeting DBE Goal:

14.01 General:

To be considered responsible and eligible for award of a contract, a bidder who has indicated in its bid that it met the DBE goal must submit the information described in this Subsection no later than five calendar days after bid opening.

If the bid of the apparent low bidder is rejected for any reason, the next low bidder may become the apparent low bidder only if it had submitted the information described in this Subsection or Subsection 15.01, as appropriate, no later than five calendar days after bid opening.

In order to be awarded this contract, a bidder must establish either (1) that it has met the DBE participation goal of the contract or (2) that it has made adequate good faith efforts (GFE) to meet the DBE goal. This requirement is in addition to all other pre-award requirements.

If the apparent low bidder indicates in the bid that it has met the DBE goal, the bidder shall submit a DBE Intended Participation Affidavit for each individual DBE, and the Intended Participation Affidavit Summary as follows:

- (1) The DBE Intended Participation Affidavit for each individual DBE and the Intended Participation Affidavit Summary must be received by LPA/Subrecipient Procurement Office no later than 4:00 P.M. on the fifth calendar day following the bid opening. Copies of these forms are available from LPA/Subrecipient. The affidavits and Summary shall indicate that the bidder has met DBE goal if this was indicated on the submittal with the bid.
- (2) The Intended Participation Affidavit Summary and the DBE Intended Participation Affidavit for each individual DBE must be accurate and complete in every detail and must be signed by an officer of the contractor(s). Percentages and dollar amounts must be accurate. Percentages shall be listed to two decimal places. The DBE Intended Participation Affidavit Summary must be submitted listing all the DBEs intended to be used and the creditable amounts.

- (3) A separate DBE Intended Participation Affidavit must be submitted for each DBE used to meet the goal of the project. The bidder shall indicate each DBE's name,—a description of the work the DBE will perform, bid item number, proposed subcontract amount, and the NAICS code applicable to the kind of work the firm would perform on the contract. A list of certified DBEs with their respective NAICS codes can be located on the DBE Directory at AZ UTRACS website. All partial items must be explained. If not, the DBE will be considered to be responsible for the entire item. The intended DBE must complete and sign the form to confirm its participation in the contract.
- (4) The affidavits and summary may be submitted electronically through email to the LPA/Subrecipient Procurement Office.
- (5) A bidder must determine DBE credit in accordance with DBE Subsection 18 (Crediting DBE Participation Toward Meeting Goals). The affidavit will be reviewed, and approved or rejected by the LPA/Subrecipient Procurement Office, with BECO concurrence.
- (6) Only those DBE firms certified by the Arizona Unified Certification Program (AZUCP) as of the deadline for bid submittal will be considered for DBE credit. It shall be the bidder's responsibility to ascertain the certification status of designated DBEs.
- (7) All DBE commitment amounts must be finalized between the DBE subcontractor and the bidder prior to the deadline for affidavit submittal. Bidders shall not inflate DBE awards in order to meet contract goals.
- (8) The bidder bears the risk of late submission or late delivery by the postal service or a delivery service. Affidavits and Summary received by the LPA/Subrecipient Procurement Office after 4:00 P.M. on the fifth calendar day following the bid opening will not be accepted.
- (9) Reduction of DBE commitments after affidavit submittal and prior to execution of the contract without good cause will result in the bid being rejected or LPA/Subrecipient rescinding any award. Scheduling conflicts are not necessarily evidence of good cause as this should have been considered during pre-bid negotiations. The contractor is responsible for ensuring the DBE is available to meet the requirements of the contract.

14.02 Failure to Comply:

If the apparent low bidder fails to submit the required information by the stated time and in the manner herein specified, or if the submitted information reveals a failure to meet the requirements of the specifications, the apparent low bidder shall be ineligible to receive award of the contract and the bid will be rejected.

15.0 Documented Good Faith Effort:

15.01 General:

To be considered responsible and eligible for award of a contract a bidder, who has indicated in its bid that it was unable to meet the DBE goal but made good faith efforts must submit the information described in this Subsection no later than five calendar days after bid opening.

If the bid of the apparent low bidder is rejected for any reason, the next low bidder may become the apparent low bidder only if it had submitted the information described in this Subsection or Subsection 14.01, as appropriate, no later than five calendar days after bid opening.

Failure to demonstrate good faith efforts to the satisfaction of the LPA/Subrecipient with concurrence of BECO will result in the rejection of the bid. In the event that the low bid is rejected, the Department will consider award of the contract to the next responsible and responsive bidder. To be considered responsive, the bidder must have submitted the information described in either Subsection 14 or 15 of this DBE special provision, no later than five calendar days after bid opening.

The bidder's good faith effort documentation must be submitted to and received by the LPA/Subrecipient Procurement Office by 4:00 P.M. on the fifth calendar day after the bids are opened. Good faith effort documentation may be submitted electronically through email to the LPA/Subrecipient Procurement Office. Good faith effort documentation submitted after the time specified will not be accepted.

The bidder bears the risk of late submission or late delivery by the postal service or a delivery service.

The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract. A generalized assertion that the contractor received multiple quotes is not sufficient unless copies of those quotes are provided.

Bidders are encouraged to review Appendix A of 49 CFR Part 26.

Useful information related to encouraging DBE participation and documented good faith efforts can be found in the "Good Faith Effort Guide" and other documents made available on the internet at BECO's website. The information provided in the "Good Faith Effort Guide" does not replace the specifications; bidders must comply with the requirements of this specification.

In order to be awarded a contract on the basis of good faith efforts, a bidder must show that it took all necessary and reasonable steps to achieve the DBE goal 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 quality, quantity, and intensity of the different kinds of efforts the bidder made will be evaluated. The efforts employed by the bidder should be those that one could reasonably expect a bidder to make if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE goal. Mere pro forma efforts are not sufficient good faith efforts to meet the DBE contract requirements.

The bidder shall, as a minimum, seek DBEs in the same geographic area in which it generally seeks subcontractors for a given project. If the bidder cannot meet the goals using DBEs from this geographic area, the bidder, as part of its effort to meet the goals, shall expand its search to a reasonably wider geographic area.

The following is a list of types of efforts a bidder must address when submitting good faith effort documentation:

- (1) Contacting the LPA/Subrecipient and BECO prior to the submission of bids, either by e-mail, or by telephone, to inform of the firm's difficulty in meeting the DBE goals on a given project, and requesting assistance. The bidder must document its contact with LPA/Subrecipient and BECO, and indicate the type of contact, the date and time of the contact, the name of the person(s) contacted, and any details related to the communication. The contact must be made in sufficient time before bid submission to allow the LPA/Subrecipient and BECO to provide effective assistance. The bidder will not be considered to have made good faith efforts if the bidder failed to contact LPA/Subrecipient and BECO.
- (2) Conducting market research to identify small business contractors and suppliers, and soliciting, through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. This may include attendance at pre-bid meetings and business matchmaking meetings and events, advertising and/or providing written notices, posting of "Notices of Sources Sought" and/or "Requests for Proposals" at reasonable locations, including the contractor's website, written notices or emails to all DBEs listed in the Department's directory of transportation firms that specialize in areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project. The bidder should solicit this interest as early in the acquisition process as practicable to allow DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow-up initial solicitations.
- (3) 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 (for example smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
- (4) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist DBEs in responding to solicitations.

- (5) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to the DBE subcontractors and suppliers, and to select those portions of 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 from 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 work.

Mailings to DBEs requesting bids are not alone sufficient to constitute good faith effort.

A bidder 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 in itself sufficient reason for a bidder's failure to meet the 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 the bidder of the responsibility to make good faith efforts. However, prime contractors are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Documentation, such as copies of all other bids or quotes, must be submitted.

- (6) 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 the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- (7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (8) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (9) 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.

Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. The contractor must submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract. A generalized assertion that the contractor has received multiple quotes is not sufficient unless copies of those quotes are provided. The Department may contact rejected DBEs as part of its investigation.

However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

In determining whether a bidder has made good faith efforts, the LPA/Subrecipient will review the documented efforts of the contractor and will review the performance of other bidders in meeting the contract goal.

A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

The LPA/Subrecipient will evaluate the submittal and make a determination, with BECO concurrence, on whether in fact good faith efforts have been demonstrated consistent with the specifications and the Federal regulations, 49 CFR 26, Appendix A.

15.02 Failure to Comply:

If the apparent low bidder fails to submit the required information by the stated time and in the manner herein specified, or if the submitted information reveals a failure to meet the requirements of the specifications, the apparent low bidder shall be ineligible to receive award of the contract and the bid will be rejected.

15.03 Appeal and Protest of Good Faith Effort Determination:

Any interested party may appeal the determination of LPA/Subrecipient to the State Engineer. That appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. The protest must be received by the State Engineer no later than seven calendar days after the decision of the LPA/Subrecipient. Copies of the protest shall be sent by the protestant to the LPA/Subrecipient and every bidder, at the same time the protest is submitted to the State Engineer. Any bidder whose bid is rejected for failure to meet the goal or make GFE will be given the opportunity to meet in person with the State Engineer, at the bidder's written request included in the protest, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

Any interested party may submit a response to the appeal no later than seven calendar days after the appeal. Responses from interested parties must also be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. Any interested party submitting such response shall also provide a copy of its response to the LPA/Subrecipient and every bidder, at the same time the protest is submitted to the State Engineer. The State Engineer shall promptly consider any appeals under this subsection and shall notify the LPA/Subrecipient and all bidders in writing of the State Engineer's findings and decision.

In accordance with 49 CFR 26.53(d)(5), the result of the State Engineer's decision is not subject to administrative appeal to the USDOT.

16.0 Rejection of Low Bid:

If, for any reason, the bid of the apparent low bidder is rejected, a new apparent low bidder will be identified. The LPA/Subrecipient Procurement Office will notify the new apparent low bidder.

A bidder may become the apparent low bidder only if it had submitted the information described in Subsection 14.01 or 15.01, as appropriate, no later than five calendar days after bid opening.

17.0 Payment Reporting:

The contractor shall report on a monthly basis indicating the amounts paid to all subcontractors, of all tiers, working on the project. Reporting shall be in accordance with Prompt Pay and Payment Reporting requirements section ____ of the contract specifications.

18.0 Crediting DBE Participation Toward Meeting Goals:

18.01 General Requirements:

To count toward meeting a goal, the DBE firm must be certified as of the deadline for submission of bids in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS under the Firm Directory. General descriptions of all NAICS codes can be found at www.naics.com.

Credit towards the contractor's DBE goal is given only after the DBE has been paid for the work performed.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate will not be credited toward DBE participation. Work included in a force account item cannot be listed on the DBE Intended Participation Affidavit.

The contractor bears the responsibility to determine whether the DBE possesses the proper contractor's license(s) to perform the work and, if DBE credit is requested, that the DBE subcontractor is certified for the requested type of work.

If a DBE cannot complete its work due to failure to obtain or maintain its licensing, the contractor bears the responsibility to notify the LPA/Subrecipient immediately after the contractor becomes aware of the situation, and request approval to replace the DBE with another DBE. The

contractor shall follow the DBE termination/substitution requirements described in Subsection 24.0 of these DBE provisions.

The Department's certification is not a representation of a DBE's qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime contractor, subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE joint venture partner shall be responsible for a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control.

The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

With the exception of bond premiums, all work must be attributed to specific bid items. Where work applies to several items, the DBE contracting arrangement must specify unit price and amount attributable to each bid item. DBE credit for any individual item of work performed by the DBE shall be the lesser of the amount to be paid to the DBE or the prime contractor's bid price. If the amount bid by the DBE on any item exceeds the prime contractor's bid amount, the prime contractor may not obtain credit by attributing the excess to other items.

Where more than one DBE is engaged to perform parts of an item (for example, supply and installation), the total amount payable to the DBEs will not be considered in excess of the prime contractor's bid amount for that item.

Bond premiums may be stated separately, so long as the arrangement between the prime contractor and the DBE provides for separate payment not to exceed the price charged by the bonding company.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

If a DBE performs part of an item (for example, installation of materials purchased by a Non-DBE), the DBE credit shall not exceed the lesser of (1) the DBE's contract or (2) the prime contractor's bid for the item, less a reasonable deduction for the portion performed by the Non-DBE.

When a DBE performs as a partner in a joint venture, only that portion of the total dollar value of the contract which is clearly and distinctly performed by the DBE's own forces can be credited toward the DBE goal.

The contractor may credit second-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE used to meet the goal must meet the requirements of a first-tier DBE subcontract.

A prime contractor may credit the entire amount of that portion of a construction contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards the DBE goal only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward a DBE goal.

A prime contractor may credit 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 USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

18.02 DBE Prime Contractor:

When a certified DBE firm bids on a contract that contains a DBE goal, the DBE firm is responsible for meeting the DBE goal on the contract or making good faith efforts to meet the goal, just like any other bidder. In most cases, a DBE bidder on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the DBE bidder or any other DBE subcontractors and DBE suppliers will count toward the DBE goal. The DBE bidder shall list itself along with any DBE subcontractors and suppliers, on the DBE Intended Participation Affidavit and Summary in order to receive credit toward the DBE goal.

18.03 Effect of Loss of DBE Eligibility:

If a DBE is deemed ineligible (decertified) or suspended in accordance with 49 CFR 26.87 and 26.88, the DBE may not be considered to meet a contract goal on a new contract, but may be considered to meet the contract goal under a subcontract that was executed before the DBE suspension or decertification is effective.

When a committed DBE firm or a DBE prime contractor loses its DBE eligibility and a subcontract or contract has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward the contract goal. The contractor must meet the contract goal with an eligible DBE firm or firms or demonstrate good faith effort. When a subcontract is executed with the DBE firm before the Department notified the firm of its ineligibility, the contractor may continue to use the firm on the contract and may continue to receive credit toward the DBE goal for the firm's work.

18.04 Notifying the Contractor of DBE Certification Status:

Each DBE contract of any tier shall require any DBE subcontractor or supplier that is either decertified or certified during the term of the contract to immediately notify the contractor and all parties to the DBE contract in writing, with the date of decertification or certification. The contractor shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

18.05 Police Officers:

DBE credit will not be permitted for procuring DPS officers. For projects on which officers from other agencies are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

18.06 Commercially Useful Function:

A prime contractor can credit expenditures to a DBE subcontractor toward DBE goals only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the LPA/Subrecipient will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the LPA/Subrecipient will examine similar transactions, particularly those in which DBEs do not participate.

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 if 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, the LPA/Subrecipient will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The LPA/Subrecipient will

determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The LPA/Subrecipient will notify the contractor, in writing, if it determines that the contractor's DBE subcontractor is not performing a CUF. The contractor will be notified within seven calendar days of the LPA/Subrecipient's decision.

Decisions on CUF may be appealed to the ADOT BECO. The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the ADOT BECO. The appeal must be received by the ADOT BECO no later than seven calendar days after the decision of LPA/Subrecipient. LPA/Subrecipient decision remains in effect unless and until ADOT BECO reverses or modifies LPA/Subrecipient decision. ADOT BECO will promptly consider any appeals under this subsection and notify the contractor of the ADOT BECO findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The LPA/Subrecipient will conduct project site visits on the contract to confirm that DBEs are performing a CUF. The contractor shall cooperate during the site visits and the LPA/Subrecipient staff will make every effort not to disrupt work on the project.

18.07 Trucking:

LPA/Subrecipient will use the following factors in determining whether a DBE trucking company is performing a commercially useful function. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract on every day that credit is to be given for trucking.

The contractor will receive credit for the total value of transportation services provided by the DBE using trucks it owns, insures and operates, and using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks with drivers from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE leased trucks with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks with drivers receives credit only for the fee or commission paid to the DBE as a result of the lease agreement.

Example: DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example: DBE Firm X uses two of its own trucks on a contract. It leases three additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all five trucks.

For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE. Credit will be allowed only for those lease costs related to the time each truck is devoted to the project.

DBE credit for supplying paving grade asphalt and other asphalt products will only be permitted for standard industry hauling costs, and only if the DBE is owner or lessee of the equipment and trucks. Leases for trucks must be long term (extending for a fixed time period and not related to time for contract performance) and must include all attendant responsibilities such as insurance, titling, hazardous waste requirements, and payment of drivers.

18.08 Materials and Supplies:

LPA/Subrecipient will credit expenditures with DBEs for material and supplies towards the DBE goal as follows. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies is credited. A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract, and of the general character described by the specifications.

If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies is credited. A DBE regular dealer is defined as a firm that owns, operates, or maintains a store or warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established,

regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, stone or asphalt without owning, operating, or maintaining a place of business, as provided above, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement, and not on an ad-hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the LPA/Subrecipient will credit the entire amount of the fees or commissions charged by the DBE for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted toward the DBE goal.

The LPA/Subrecipient will credit expenditures with DBEs for material and supplies (e.g. whether a firm is acting as a regular dealer or a transaction expeditor) towards the DBE goal on a contract-by-contract basis. The fact that a DBE firm qualifies under a classification (manufacturer, regular dealer or supplier) for one contract does not mean it will qualify for the same classification on another contract. The bidder shall be responsible for verifying whether a DBE qualifies as a DBE manufacturer, regular dealer or supplier. The bidder may contact the LPA/Subrecipient for assistance in this determination.

19.0 Effect of Contract Changes:

If for any reason it becomes apparent that the DBE goal will not be met then the contractor shall: (1) immediately notify the LPA/Subrecipient of the potential or actual decrease in DBE compensation, and (2) make good faith efforts to obtain DBE participation to meet or exceed the DBE contract goal. Good faith efforts required under the provisions of this section may vary, depending on the time available, the nature of the change, who initiated the change, and other factors as determined by LPA/Subrecipient.

LPA/Subrecipient will approve or deny the contractor's good faith efforts with BECO concurrence.

The contractor is not required to take work committed to another subcontractor and assign it to a DBE subcontractor in order to meet the committed DBE percentage.

If the resulting change increases the scope or quantity of work being done by a DBE subcontractor, the DBE shall be given the opportunity to complete the additional work and receive additional compensation beyond their original subcontract amount.

20.0 DBE Participation Above the Goal (Race Neutral Participation):

Additional DBE participation above the DBE participation required to meet the contract DBE goal is an important aspect of the Department's DBE program. The contractor is strongly encouraged to use additional DBEs above the DBE goal requirement in the contract to assist the Department in meeting its overall DBE goal and help the Department to meet the maximum feasible portion of its DBE goals through race neutral participation as outlined in 49 CFR Part 26.

There are fewer administrative requirements on the part of the contractor when using race neutral DBEs (DBEs not listed on the DBE Intended Participation Affidavit Summary). For example, if a DBE is not listed on the DBE Intended Participation Affidavit Summary, the DBE does not have to submit an Affidavit, and the subcontract approval process follows the same process of any other subcontract. The contractor does not have to replace the race neutral DBE with another DBE subcontractor if the race neutral DBE fails to perform. Therefore these DBEs are treated as any other subcontractor on the project.

21.0 Required Provisions for DBE Subcontracts:

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a party shall include, as a physical attachment, DBE Subcontract Compliance Assurances available from the LPA/Subrecipient.

Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the LPA/Subrecipient and ADOT deem appropriate as outlined in DBE Subsection 2.0.

LPA/Subrecipient reserves the right to conduct random reviews of DBE and non-DBE subcontract documentation to ensure compliance with federal requirements.

The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26.

The Contractor shall provide electronic copies of signed subcontract agreements for all DBE Subcontracts listed on the DBE Intended Participation Affidavit Summary by uploading them within 15 calendar days of an approved contract to the LPA DBE System.

22.0 Contract Performance:

Contract items of work designated by the contractor to be awarded to DBEs shall be performed by the designated DBE or a LPA/Subrecipient, with BECO concurrence, approved DBE substitute. DBE contract work items shall not be performed by the contractor, or a non-DBE subcontractor without prior approval by the LPA/Subrecipient, with BECO concurrence. The DBE must perform a commercially useful function; that is, the DBE must manage, perform, and supervise a distinct element of work.

The contractor is required to use DBEs identified to meet the contract goal, so the prime contractor is responsible for ensuring that the DBEs are available to meet scheduling, work and other requirements on the contract.

LPA/Subrecipient will conduct reviews to ensure compliance with DBE requirements. The reviews may include, among other activities, interview of DBEs and their employees and the contractor and its employees. The contractor shall cooperate in the review and make its employees available. The contractor shall inform the LPA/Subrecipient in advance when each DBE will be working on the project to help facilitate reviews.

LPA/Subrecipient reserves the right to inspect all records of the contractor and all records of the DBEs and non-DBE subcontractors concerning this contract. The contractor must make all documents related to all contracts available to the LPA/Subrecipient upon request.

The contractor shall provide to the LPA/Subrecipient, at the pre-construction conference, copies of all completed, approved, and signed subcontracts, purchase orders, invoices, etc., with all committed DBEs. These documents shall include the AZ UTRACS Registration number for the subcontractor or materials supplier.

Use of every DBE listed on the DBE Intended Participation Affidavit Summary is a condition of this contract. The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed on the Intended Participation Affidavit Summary unless the contractor obtains written consent from the LPA/Subrecipient with BECO concurrence. The contractor shall not be entitled to any payment for work or material that is not performed or supplied by the listed DBE, unless the contractor obtains written consent from the LPA/Subrecipient with BECO concurrence.

23.0 Joint Checks:

23.01 Requirements:

A DBE subcontractor and a material supplier (or equipment supplier) may request permission for the use of joint checks for payments from the prime contractor to the DBE subcontractor and the supplier. Joint checks may be issued only if all the conditions in this subsection are met.

1. The DBE subcontractor must be independent from the prime contractor and the supplier, and must perform a commercially useful function. The DBE subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE subcontractor may not be utilized as an extra participant in a transaction, contract, or project in order to obtain the appearance of DBE participation.
2. The use of joint checks will be allowed only if the prime contractor, DBE subcontractor, and material supplier establish that the use of joint checks in similar transactions is a

commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBE's do not participate.

3. A material or supply contract may not bear an excessive ratio relative to the DBE subcontractor's normal capacity.
4. There may not be any exclusive arrangement between one prime and one DBE in the use of joint checks that may bring into question whether the DBE is independent of the prime contractor.
5. Any arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the supplier.
6. The prime contractor may act solely as the payer of the joint check, and may not have responsibility for establishing the terms of the agreement between the DBE subcontractor and the supplier.
7. The DBE must be responsible for receiving the check from the prime contractor and delivering the check to the supplier.
8. The prime contractor cannot require the DBE subcontractor to use a specific supplier, and the prime contractor may not participate in the negotiation of unit prices between the DBE subcontractor and the supplier.

23.02 Procedure and Compliance:

1. BECO must approve the agreement for the use of joint checks in writing before any joint checks are issued. The prime contractor shall submit a DBE joint check request form, available from the BECO website, along with the joint check agreement, to LPA/Subrecipient and BECO through email within seven calendar days from the time the subcontract is executed.
2. After obtaining authorization from BECO for the use of joint checks, the prime contractor, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the agreement by the LPA/Subrecipient.
3. Copies of canceled checks must be submitted, with the payment information for the period in which the joint check was issued, electronically through email to LPA/Subrecipient Procurement Office and made available for review at the time of the onsite CUF review. The prime contractor, DBE, and supplier each have an independent duty to report to the LPA/Subrecipient in the case of any change from the approved joint check arrangement.

4. Any failure to comply will be considered by the LPA/Subrecipient, with ADOT concurrence to be a material breach of this contract and will subject the prime contractor, DBE, and supplier to contract remedies and, in the case of serious violations, a potential for termination of the contract, or other remedies which may prevent future participation by the offending party.

24.0 DBE Termination/Substitution:

24.01 General Requirements:

The contractor shall make all reasonable efforts to avoid terminating or substituting a DBE listed on the DBE Intended Participation Affidavit Summary. At a minimum, the contractor shall negotiate in good faith, give timely notices and/or extend deadlines to the extent that it will not jeopardize the contract with the LPA/Subrecipient. Reasonable methods to resolve performance disputes must be applied and documentation provided to LPA/Subrecipient before attempting to substitute or terminate a DBE.

24.02 Contractor Notice of Termination/Substitution:

All terminations, substitutions, and reductions in scope of work to be performed by DBEs listed on the DBE Intended Participation Affidavit Summary must be approved in writing by the LPA/Subrecipient, with BECO concurrence. The contractor shall contact the LPA/Subrecipient within 24 hours from the first sign of any reason for potential DBE termination/substitution.

The contractor shall not terminate a DBE subcontractor listed on the DBE Intended Participation Affidavit or complete the work contracted to the DBE with its own forces or with a non-DBE firm without the LPA/Subrecipient written consent and BECO concurrence. Before submitting a formal request to the LPA/Subrecipient for DBE termination/substitution, the contractor shall give written notice to the DBE subcontractor with a copy to the LPA/Subrecipient of its intent to terminate or substitute the DBE identifying the reason for the action. The notice shall include the deadline for the DBE to submit a written response advising the contractor, LPA/Subrecipient of its position which shall be a minimum of five calendar days after the notice is given. Before making a determination for approval regarding the contractor's termination and substitution request, the LPA/Subrecipient, with BECO concurrence, will consider both the contractor's request and the DBE firm's response.

24.03 Contractor Request for Termination/Substitution:

The contractor shall formally request the termination or substitution of a DBE listed on the DBE Intended Participation Affidavit Summary by submitting the DBE Termination/Substitution Request form with supporting documentation to the LPA/Subrecipient; form is available from the LPA/Subrecipient. The submission shall include the following information:

- 1) The date the contractor determined the DBE to be unwilling, unable, or ineligible to perform.

- 2) A brief statement of facts describing the situation and citing specific actions or inaction by the DBE firm giving rise to contractor's assertion that the DBE firm is unwilling, unable, or ineligible to perform.
- 3) A brief statement of the good faith efforts undertaken by the contractor to enable the DBE firm to perform.
- 4) The total dollar amount currently paid for work performed by the DBE firm.
- 5) The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and over which the contractor and the DBE firm have no dispute.
- 6) The projected date that the contractor requires a substitution or replacement DBE to commence work, if consent is granted to the request.
- 7) The DBE's response to the notice of intent to terminate. If there is no response from the DBE within the time allowed in the notice of intent to terminate, the contractor shall state that no response was received.

Written consent for terminating any DBE listed on the DBE Intended Participation Affidavit Summary will be granted only where the contractor can demonstrate good cause showing that the DBE is unable, unwilling, or ineligible to perform. Such written consent to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE. Termination or substitution of a DBE listed on the DBE Intended Participation Affidavit Summary will not be allowed based solely on a contractor's ability to negotiate a more advantageous contract with another subcontractor. Prior to making a determination for approval regarding the contractor's termination and substitution request, the LPA/Subrecipient, with BECO concurrence, will consider both the contractor's request and the DBE firm's response.

24.04 Good Cause:

The LPA/Subrecipient, with BECO concurrence, will make the determination of good cause by providing written consent to the contractor after evaluating the contractor's good cause to terminate or substitute a DBE firm. Good cause for this purpose includes the following in relation to the listed DBE subcontractor:

1. Fails or refuses to execute a written contract.
2. Fails or refuses to perform the work of its subcontract in a way consistent with normal industry practice standards. However, good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
3. Fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond/insurance requirements.
4. Becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. Is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal or state law.
6. Is not a responsible contractor.
7. Voluntarily withdraws from the project and provides written notice of its withdrawal to the Department.

8. Is ineligible to receive DBE credit for the type of work required.
9. A DBE owner dies or becomes disabled with the result that the firm is unable to complete its work on the contract.
10. Other documented good cause that the BECO determines compels the termination or substitution of the DBE subcontractor.

24.05 DBE Termination/Substitution Good Faith Effort:

If the LPA/Subrecipient approves the termination of a DBE, the contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The good faith efforts as identified in DBE Subsection 15.0 shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. If a replacement DBE is not identified for the original DBE's work, the good faith efforts shall be documented and provided, upon request, to the LPA/Subrecipient within seven calendar days from the date of the request.

A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find the replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

The termination of a DBE firm shall not relieve the contractor of its obligations under this Special Provision, and the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal.

If the LPA/Subrecipient has eliminated items of work subcontracted to a committed DBE, the prime contractor shall still make good faith efforts to replace the DBE with another DBE to the extent necessary to meet the goal. The LPA/Subrecipient will review the quality, thoroughness, and intensity of those efforts and give consideration to when the change was made, the nature of the change, and other factors as determined by the LPA/Subrecipient.

When a DBE substitution has been approved by the LPA/Subrecipient and concurred by BECO, the contractor shall submit an amended DBE Intended Participation Affidavit and Intended Participation Affidavit Summary to LPA/Subrecipient Procurement Office for approval with the substitute DBE's name, description of work, NAICS code, AZ UTRACS registration number, and dollar value of work. Approval from LPA/Subrecipient with BECO concurrence must be obtained prior to the substituted DBE beginning work.

24.06 Sanctions:

Failure by the contractor to carry out the requirements of these DBE Termination/Substitution specifications is a material breach of contract and will result in such remedies as the LPA/Subrecipient deems appropriate, with ADOT concurrence, which will include, but are not limited to the assessment of liquidated damages. The LPA/Subrecipient will deduct from monies due or becoming due to the contractor, the dollar amount of the wrongfully

substituted/replaced DBE subcontract plus 25 percent of the amount remaining to be paid to the DBE as liquidated damages. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

25.0 Certification of Final DBE Payments:

The contractor's achievement of the goal is measured by actual payments made to the DBE. The contractor shall submit the "Certification of Final DBE Payments" form for each DBE firm working on the contract. This form shall be signed by the contractor and the relevant DBE, and submitted to the LPA/Subrecipient no later than 30 days after the DBE completes its work.

The LPA/Subrecipient and ADOT will use this certification and other information available to determine applicable DBE credit allowed to date by the contractor and the extent to which the DBE firms were fully paid for that work. By the act of filing the forms, the contractor acknowledges that the information is supplied in order to justify the payment of state and federal funds to the contractor.

The contractor will not be released from the obligations of the contract until the "Certification of Final DBE Payments" forms are received and deemed acceptable by the LPA/Subrecipient.

26.0 Sanctions for Not Meeting Contract DBE Goal:

If the LPA/Subrecipient determines, with BECO concurrence, that the contractor has, without justification, not met the established DBE goal the LPA/Subrecipient will, at its discretion, deduct up to two times the amount of the unattained portion of established DBE goal from monies due or becoming due the contractor as liquidated damages, based on the circumstances of the noncompliance.

The LPA/Subrecipient, with BECO concurrence, will determine whether liquidated damages will be assessed and the amount of the liquidated damages. The LPA/Subrecipient will consider whether there have been other violations on this or other contracts, whether the failure was due to circumstances beyond the control of the contractor, whether the contractor has made good faith efforts to meet the goal, and other appropriate circumstances.

The contractor may, within 15 calendar days of receipt of the decision of the LPA/Subrecipient escalate the decision to the State Engineer. If the contractor does not escalate the decision of the LPA/Subrecipient, in writing, within 15 calendar days of receipt of the decision, the contractor will be deemed to have accepted the decision and there will be no further remedy for the contractor.

In addition to any other sanctions, willful failure of the contractor, DBE or other subcontractor to comply with this contract or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in the Department's and LPA/Subrecipient's projects.

27.0 False, Fraudulent, or Dishonest Conduct:

In addition to any other remedies or actions, the Department will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.



CONSTRUCTION CONTRACTS
LPA DBE SUBCONTRACT COMPLIANCE ASSURANCES
(07/01/2016)

LPA/SUBRECIPIENT FEDERAL AID CONTRACT WITH OR WITHOUT DBE GOAL

1. Assurances of Non-Discrimination: (LPA EPRISE 2.0)

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. 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 such other remedy as the LPA/Subrecipient, with the Department's concurrence, deems appropriate, which may include, but not limited to:

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

The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

2. Time is of the Essence: (LPA EPRISE 8.0)

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

3. Computation of Time: (LPA EPRISE 9.0)

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. In circumstances where the LPA/Subrecipient Procurement Office is closed for all or part of the last day, the period extends to the next day on which the LPA/Subrecipient Procurement Office is open.

4. Crediting DBE Participation Toward Meeting Goals: (LPA EPRISE 18.0)

General Requirements:

To count toward meeting a goal, the DBE firm must be certified as of the deadline for submission of bids in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS under the Firm Directory. General descriptions of all NAICS codes can be found at www.naics.com.

Credit towards the contractor's DBE goal is given only after the DBE has been paid for the work performed.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate will not be credited toward DBE participation. Work included in a force account item cannot be listed on the DBE Intended Participation Affidavit.

The contractor bears the responsibility to determine whether the DBE possesses the proper contractor's license(s) to perform the work and, if DBE credit is requested, that the DBE subcontractor is certified for the requested type of work.

If a DBE cannot complete its work due to failure to obtain or maintain its licensing, the contractor bears the responsibility to notify the LPA/Subrecipient immediately after the contractor becomes aware of the situation, and request approval to replace the DBE with another DBE. The contractor shall follow the DBE termination/substitution requirements described in Subsection 24.0 of these DBE provisions.

The Department's certification is not a representation of a DBE's qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime contractor, subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE joint venture partner shall be responsible for a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control.

The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.



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With the exception of bond premiums, all work must be attributed to specific bid items. Where work applies to several items, the DBE contracting arrangement must specify unit price and amount attributable to each bid item. DBE credit for any individual item of work performed by the DBE shall be the lesser of the amount to be paid to the DBE or the prime contractor's bid price. If the amount bid by the DBE on any item exceeds the prime contractor's bid amount, the prime contractor may not obtain credit by attributing the excess to other items.

Where more than one DBE is engaged to perform parts of an item (for example, supply and installation), the total amount payable to the DBEs will not be considered in excess of the prime contractor's bid amount for that item.

Bond premiums may be stated separately, so long as the arrangement between the prime contractor and the DBE provides for separate payment not to exceed the price charged by the bonding company.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

If a DBE performs part of an item (for example, installation of materials purchased by a Non-DBE), the DBE credit shall not exceed the lesser of (1) the DBE's contract or (2) the prime contractor's bid for the item, less a reasonable deduction for the portion performed by the Non-DBE.

When a DBE performs as a partner in a joint venture, only that portion of the total dollar value of the contract which is clearly and distinctly performed by the DBE's own forces can be credited toward the DBE goal.

The contractor may credit second-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE used to meet the goal must meet the requirements of a first-tier DBE subcontract.

A prime contractor may credit the entire amount of that portion of a construction contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards the DBE goal only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward a DBE goal.

A prime contractor may credit 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 USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

DBE Prime Contractor:

When a certified DBE firm bids on a contract that contains a DBE goal, the DBE firm is responsible for meeting the DBE goal on the contract or making good faith efforts to meet the goal, just like any other bidder. In most cases, a DBE bidder on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the DBE bidder or any other DBE subcontractors and DBE suppliers will count toward the DBE goal. The DBE bidder shall list itself along with any DBE subcontractors and suppliers, on the DBE Intended Participation Affidavit and Summary in order to receive credit toward the DBE goal.

Effect of Loss of DBE Eligibility:

If a DBE is deemed ineligible (decertified) or suspended in accordance with 49 CFR 26.87 and 26.88, the DBE may not be considered to meet a contract goal on a new contract, but may be considered to meet the contract goal under a subcontract that was executed before the DBE suspension or decertification is effective.

When a committed DBE firm or a DBE prime contractor loses its DBE eligibility and a subcontract or contract has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward the contract goal. The contractor must meet the contract goal with an eligible DBE firm or firms or demonstrate good faith effort. When a subcontract is executed with the DBE firm before the Department notified the firm of its ineligibility, the contractor may continue to use the firm on the contract and may continue to receive credit toward the DBE goal for the firm's work.



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Notifying the Contractor of DBE Certification Status:

Each DBE contract of any tier shall require any DBE subcontractor or supplier that is either decertified or certified during the term of the contract to immediately notify the contractor and all parties to the DBE contract in writing, with the date of decertification or certification. The contractor shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

Police Officers:

DBE credit will not be permitted for procuring DPS officers. For projects on which officers from other agencies are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

Commercially Useful Function:

A prime contractor can credit expenditures to a DBE subcontractor toward DBE goals only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the LPA/Subrecipient will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the LPA/Subrecipient will examine similar transactions, particularly those in which DBEs do not participate.

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 if 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, the LPA/Subrecipient will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The LPA/Subrecipient will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The LPA/Subrecipient will notify the contractor, in writing, if it determines that the contractor's DBE subcontractor is not performing a CUF. The contractor will be notified within seven calendar days of the LPA/Subrecipient's decision.

Decisions on CUF may be appealed to the ADOT BECO. The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the ADOT BECO. The appeal must be received by the ADOT BECO no later than seven calendar days after the decision of LPA/Subrecipient. LPA/Subrecipient decision remains in effect unless and until ADOT BECO reverses or modifies LPA/Subrecipient decision. ADOT BECO will promptly consider any appeals under this subsection and notify the contractor of the ADOT BECO findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The LPA/Subrecipient will conduct project site visits on the contract to confirm that DBEs are performing a CUF. The contractor shall cooperate during the site visits and the LPA/Subrecipient staff will make every effort not to disrupt work on the project.

Trucking:

LPA/Subrecipient will use the following factors in determining whether a DBE trucking company is performing a commercially useful function. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.



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The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract on every day that credit is to be given for trucking.

The contractor will receive credit for the total value of transportation services provided by the DBE using trucks it owns, insures and operates, and using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks with drivers from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE leased trucks with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks with drivers receives credit only for the fee or commission paid to the DBE as a result of the lease agreement.

Example: DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example: DBE Firm X uses two of its own trucks on a contract. It leases three additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all five trucks.

For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE. Credit will be allowed only for those lease costs related to the time each truck is devoted to the project.

DBE credit for supplying paving grade asphalt and other asphalt products will only be permitted for standard industry hauling costs, and only if the DBE is owner or lessee of the equipment and trucks. Leases for trucks must be long term (extending for a fixed time period and not related to time for contract performance) and must include all attendant responsibilities such as insurance, titling, hazardous waste requirements, and payment of drivers.

Materials and Supplies:

LPA/Subrecipient will credit expenditures with DBEs for material and supplies towards the DBE goal as follows. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies is credited.

A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract, and of the general character described by the specifications.

If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies is credited. A DBE regular dealer is defined as a firm that owns, operates, or maintains a store or warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, stone or asphalt without owning, operating, or maintaining a place of business, as provided above, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement, and not on an ad-hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.



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With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the LPA/Subrecipient will credit the entire amount of the fees or commissions charged by the DBE for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted toward the DBE goal.

The LPA/Subrecipient will credit expenditures with DBEs for material and supplies (e.g. whether a firm is acting as a regular dealer or a transaction expeditor) towards the DBE goal on a contract-by-contract basis. The fact that a DBE firm qualifies under a classification (manufacturer, regular dealer or supplier) for one contract does not mean it will qualify for the same classification on another contract. The bidder shall be responsible for verifying whether a DBE qualifies as a DBE manufacturer, regular dealer or supplier. The bidder may contact the LPA/Subrecipient for assistance in this determination.

5. Effect of Contract Changes: (LPA EPRISE 19.0)

If for any reason it becomes apparent that the DBE goal will not be met then the contractor shall: (1) immediately notify the LPA/Subrecipient of the potential or actual decrease in DBE compensation, and (2) make good faith efforts to obtain DBE participation to meet or exceed the DBE contract goal. Good faith efforts required under the provisions of this section may vary, depending on the time available, the nature of the change, who initiated the change, and other factors as determined by LPA/Subrecipient.

LPA/Subrecipient will approve or deny the contractor's good faith efforts with BECO concurrence.

The contractor is not required to take work committed to another subcontractor and assign it to a DBE subcontractor in order to meet the committed DBE percentage.

If the resulting change increases the scope or quantity of work being done by a DBE subcontractor, the DBE shall be given the opportunity to complete the additional work and receive additional compensation beyond their original subcontract amount.

6. DBE Participation Above the Goal (Race Neutral Participation): (LPA EPRISE 20.0)

Additional DBE participation above the DBE participation required to meet the contract DBE goal is an important aspect of the Department's DBE program. The contractor is strongly encouraged to use additional DBEs above the DBE goal requirement in the contract to assist the Department in meeting its overall DBE goal and help the Department to meet the maximum feasible portion of its DBE goals through race neutral participation as outlined in 49 CFR Part 26.

There are fewer administrative requirements on the part of the contractor when using race neutral DBEs (DBEs not listed on the DBE Intended Participation Affidavit Summary). For example, if a DBE is not listed on the DBE Intended Participation Affidavit Summary, the DBE does not have to submit an Affidavit, and the subcontract approval process follows the same process of any other subcontract. The contractor does not have to replace the race neutral DBE with another DBE subcontractor if the race neutral DBE fails to perform. Therefore these DBEs are treated as any other subcontractor on the project.

7. Required Provisions for DBE Subcontracts: (LPA EPRISE 21.0)

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a party shall include, as a physical attachment, DBE Subcontract Compliance Assurances available from the LPA/Subrecipient.

Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the LPA/Subrecipient and ADOT deem appropriate as outlined in DBE Subsection 2.0.

LPA/Subrecipient reserves the right to conduct random reviews of DBE and non-DBE subcontract documentation to ensure compliance with federal requirements.

The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26.



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The Contractor shall provide electronic copies of signed subcontract agreements for all DBE Subcontracts listed on the DBE Intended Participation Affidavit Summary by uploading them within 15 calendar days of an approved contract to the LPA DBE System.

8. Contract Performance: (LPA EPRISE 22.0)

Contract items of work designated by the contractor to be awarded to DBEs shall be performed by the designated DBE or a LPA/Subrecipient, with BECO concurrence, approved DBE substitute. DBE contract work items shall not be performed by the contractor, or a non-DBE subcontractor without prior approval by the LPA/Subrecipient, with BECO concurrence. The DBE must perform a commercially useful function; that is, the DBE must manage, perform, and supervise a distinct element of work.

The contractor is required to use DBEs identified to meet the contract goal, so the prime contractor is responsible for ensuring that the DBEs are available to meet scheduling, work and other requirements on the contract.

LPA/Subrecipient will conduct reviews to ensure compliance with DBE requirements. The reviews may include, among other activities, interview of DBEs and their employees and the contractor and its employees. The contractor shall cooperate in the review and make its employees available. The contractor shall inform the LPA/Subrecipient in advance when each DBE will be working on the project to help facilitate reviews.

LPA/Subrecipient reserves the right to inspect all records of the contractor and all records of the DBEs and non-DBE subcontractors concerning this contract. The contractor must make all documents related to all contracts available to the LPA/Subrecipient upon request.

The contractor shall provide to the LPA/Subrecipient, at the pre-construction conference, copies of all completed, approved, and signed subcontracts, purchase orders, invoices, etc., with all committed DBEs. These documents shall include the AZ UTRACS Registration number for the subcontractor or materials supplier.

Use of every DBE listed on the DBE Intended Participation Affidavit Summary is a condition of this contract. The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed on the Intended Participation Affidavit Summary unless the contractor obtains written consent from the LPA/Subrecipient with BECO concurrence. The contractor shall not be entitled to any payment for work or material that is not performed or supplied by the listed DBE, unless the contractor obtains written consent from the LPA/Subrecipient with BECO concurrence.

9. Joint Checks: (LPA EPRISE 23.0)

Requirements:

A DBE subcontractor and a material supplier (or equipment supplier) may request permission for the use of joint checks for payments from the prime contractor to the DBE subcontractor and the supplier. Joint checks may be issued only if all the conditions in this subsection are met.

1. The DBE subcontractor must be independent from the prime contractor and the supplier, and must perform a commercially useful function. The DBE subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE subcontractor may not be utilized as an extra participant in a transaction, contract, or project in order to obtain the appearance of DBE participation.
2. The use of joint checks will be allowed only if the prime contractor, DBE subcontractor, and material supplier establish that the use of joint checks in similar transactions is a commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBE's do not participate.
3. A material or supply contract may not bear an excessive ratio relative to the DBE subcontractor's normal capacity.
4. There may not be any exclusive arrangement between one prime and one DBE in the use of joint checks that may bring into question whether the DBE is independent of the prime contractor.
5. Any arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the supplier.
6. The prime contractor may act solely as the payer of the joint check, and may not have responsibility for establishing the terms of the agreement between the DBE subcontractor and the supplier.
7. The DBE must be responsible for receiving the check from the prime contractor and delivering the check to the supplier.



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8. The prime contractor cannot require the DBE subcontractor to use a specific supplier, and the prime contractor may not participate in the negotiation of unit prices between the DBE subcontractor and the supplier.

Procedure and Compliance:

1. BECO must approve the agreement for the use of joint checks in writing before any joint checks are issued. The prime contractor shall submit a DBE joint check request form, available from the BECO website, along with the joint check agreement, to LPA/Subrecipient and BECO through email within seven calendar days from the time the subcontract is executed.
2. After obtaining authorization from BECO for the use of joint checks, the prime contractor, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the agreement by the LPA/Subrecipient.
3. Copies of canceled checks must be submitted, with the payment information for the period in which the joint check was issued, electronically through email to LPA/Subrecipient Procurement Office and made available for review at the time of the onsite CUF review. The prime contractor, DBE, and supplier each have an independent duty to report to the LPA/Subrecipient in the case of any change from the approved joint check arrangement.
4. Any failure to comply will be considered by the LPA/Subrecipient, with ADOT concurrence to be a material breach of this contract and will subject the prime contractor, DBE, and supplier to contract remedies and, in the case of serious violations, a potential for termination of the contract, or other remedies which may prevent future participation by the offending party.

10. DBE Termination/Substitution:

(LPA EPRISE 24.0)

General Requirements:

The contractor shall make all reasonable efforts to avoid terminating or substituting a DBE listed on the DBE Intended Participation Affidavit Summary. At a minimum, the contractor shall negotiate in good faith, give timely notices and/or extend deadlines to the extent that it will not jeopardize the contract with the LPA/Subrecipient. Reasonable methods to resolve performance disputes must be applied and documentation provided to LPA/Subrecipient before attempting to substitute or terminate a DBE.

Contractor Notice of Termination/Substitution:

All terminations, substitutions, and reductions in scope of work to be performed by DBEs listed on the DBE Intended Participation Affidavit Summary must be approved in writing by the LPA/Subrecipient, with BECO concurrence. The contractor shall contact the LPA/Subrecipient within 24 hours from the first sign of any reason for potential DBE termination/substitution.

The contractor shall not terminate a DBE subcontractor listed on the DBE Intended Participation Affidavit or complete the work contracted to the DBE with its own forces or with a non-DBE firm without the LPA/Subrecipient written consent and BECO concurrence. Before submitting a formal request to the LPA/Subrecipient for DBE termination/substitution, the contractor shall give written notice to the DBE subcontractor with a copy to the LPA/Subrecipient of its intent to terminate or substitute the DBE identifying the reason for the action. The notice shall include the deadline for the DBE to submit a written response advising the contractor, LPA/Subrecipient of its position which shall be a minimum of five calendar days after the notice is given. Before making a determination for approval regarding the contractor's termination and substitution request, the LPA/Subrecipient, with BECO concurrence, will consider both the contractor's request and the DBE firm's response.

Contractor Request for Termination/Substitution:

The contractor shall formally request the termination or substitution of a DBE listed on the DBE Intended Participation Affidavit Summary by submitting the DBE Termination/Substitution Request form with supporting documentation to the LPA/Subrecipient; form is available from the LPA/Subrecipient. The submission shall include the following information:

1. The date the contractor determined the DBE to be unwilling, unable, or ineligible to perform.
2. A brief statement of facts describing the situation and citing specific actions or inaction by the DBE firm giving rise to contractor's assertion that the DBE firm is unwilling, unable, or ineligible to perform.
3. A brief statement of the good faith efforts undertaken by the contractor to enable the DBE firm to perform.
4. The total dollar amount currently paid for work performed by the DBE firm.



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5. The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and over which the contractor and the DBE firm have no dispute.
6. The projected date that the contractor requires a substitution or replacement DBE to commence work, if consent is granted to the request.
7. The DBE's response to the notice of intent to terminate. If there is no response from the DBE within the time allowed in the notice of intent to terminate, the contractor shall state that no response was received.

Written consent for terminating any DBE listed on the DBE Intended Participation Affidavit Summary will be granted only where the contractor can demonstrate good cause showing that the DBE is unable, unwilling, or ineligible to perform. Such written consent to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE. Termination or substitution of a DBE listed on the DBE Intended Participation Affidavit Summary will not be allowed based solely on a contractor's ability to negotiate a more advantageous contract with another subcontractor. Prior to making a determination for approval regarding the contractor's termination and substitution request, the LPA/Subrecipient, with BECO concurrence, will consider both the contractor's request and the DBE firm's response.

Good Cause:

The LPA/Subrecipient, with BECO concurrence, will make the determination of good cause by providing written consent to the contractor after evaluating the contractor's good cause to terminate or substitute a DBE firm. Good cause for this purpose includes the following in relation to the listed DBE subcontractor:

1. Fails or refuses to execute a written contract.
2. Fails or refuses to perform the work of its subcontract in a way consistent with normal industry practice standards. However, good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
3. Fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond/insurance requirements.
4. Becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. Is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal or state law.
6. Is not a responsible contractor.
7. Voluntarily withdraws from the project and provides written notice of its withdrawal to the Department.
8. Is ineligible to receive DBE credit for the type of work required.
9. A DBE owner dies or becomes disabled with the result that the firm is unable to complete its work on the contract.
10. Other documented good cause that the BECO determines compels the termination or substitution of the DBE subcontractor.

DBE Termination/Substitution Good Faith Effort:

If the LPA/Subrecipient approves the termination of a DBE, the contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The good faith efforts as identified in DBE Subsection 15.0 shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. If a replacement DBE is not identified for the original DBE's work, the good faith efforts shall be documented and provided, upon request, to the LPA/Subrecipient within seven calendar days from the date of the request.

A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find the replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

The termination of a DBE firm shall not relieve the contractor of its obligations under this Special Provision, and the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal.

If the LPA/Subrecipient has eliminated items of work subcontracted to a committed DBE, the prime contractor shall still make good faith efforts to replace the DBE with another DBE to the extent necessary to meet the goal. The LPA/Subrecipient will review the quality, thoroughness, and intensity of those efforts and give consideration to when the change was made, the nature of the change, and other factors as determined by the LPA/Subrecipient.



CONSTRUCTION CONTRACTS
LPA DBE SUBCONTRACT COMPLIANCE ASSURANCES
(07/01/2016)

When a DBE substitution has been approved by the LPA/Subrecipient and concurred by BECO, the contractor shall submit an amended DBE Intended Participation Affidavit and Intended Participation Affidavit Summary to LPA/Subrecipient Procurement Office for approval with the substitute DBE's name, description of work, NAICS code, AZ UTRACS registration number, and dollar value of work. Approval from LPA/Subrecipient with BECO concurrence must be obtained prior to the substituted DBE beginning work.

Sanctions:

Failure by the contractor to carry out the requirements of these DBE Termination/Substitution specifications is a material breach of contract and will result in such remedies as the LPA/Subrecipient deems appropriate, with ADOT concurrence, which will include, but are not limited to the assessment of liquidated damages. The LPA/Subrecipient will deduct from monies due or becoming due to the contractor, the dollar amount of the wrongfully substituted/replaced DBE subcontract plus 25 percent of the amount remaining to be paid to the DBE as liquidated damages. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

11. Certification of Final DBE Payments: (LPA EPRISE 25.0)

The contractor's achievement of the goal is measured by actual payments made to the DBE. The contractor shall submit the "Certification of Final DBE Payments" form for each DBE firm working on the contract. This form shall be signed by the contractor and the relevant DBE, and submitted to the LPA/Subrecipient no later than 30 days after the DBE completes its work.

The LPA/Subrecipient and ADOT will use this certification and other information available to determine applicable DBE credit allowed to date by the contractor and the extent to which the DBE firms were fully paid for that work. By the act of filing the forms, the contractor acknowledges that the information is supplied in order to justify the payment of state and federal funds to the contractor.

The contractor will not be released from the obligations of the contract until the "Certification of Final DBE Payments" forms are received and deemed acceptable by the LPA/Subrecipient.

12. Sanctions for Not Meeting Contract DBE Goal: (LPA EPRISE 26.0)

If the LPA/Subrecipient determines, with BECO concurrence, that the contractor has, without justification, not met the established DBE goal the LPA/Subrecipient will, at its discretion, deduct up to two times the amount of the unattained portion of established DBE goal from monies due or becoming due the contractor as liquidated damages, based on the circumstances of the noncompliance.

The LPA/Subrecipient, with BECO concurrence, will determine whether liquidated damages will be assessed and the amount of the liquidated damages. The LPA/Subrecipient will consider whether there have been other violations on this or other contracts, whether the failure was due to circumstances beyond the control of the contractor, whether the contractor has made good faith efforts to meet the goal, and other appropriate circumstances.

The contractor may, within 15 calendar days of receipt of the decision of the LPA/Subrecipient escalate the decision to the State Engineer. If the contractor does not escalate the decision of the LPA/Subrecipient, in writing, within 15 calendar days of receipt of the decision, the contractor will be deemed to have accepted the decision and there will be no further remedy for the contractor.

In addition to any other sanctions, willful failure of the contractor, DBE or other subcontractor to comply with this contract or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in the Department's and LPA/Subrecipient's projects.

27.0 False, Fraudulent, or Dishonest Conduct: (LPA EPRISE 27.0)

In addition to any other remedies or actions, the Department will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.

EQUAL EMPLOYMENT OPPORTUNITY
COMPLIANCE REPORTS

(Project, Training and Annual)

Federal-Aid Projects

February 1, 1977; Revised July 1, 1978; Revised November 3, 1980
Revised April 15, 1981; Revised September 7, 1983
Revised October 15, 1998; Revised August, 1, 2005;
Revised March 1, 2015, Revised August 24, 2016

ANNUAL REPORT:

For each contract in the amount of \$10,000 or more, and for each subcontract, regardless of tier not including material suppliers, in the amount of \$10,000 or more, the contractor and each subcontractor regardless of tier shall submit an annual Equal Employment Opportunity (EEO) Report containing all the information required on Form FHWA-1391.

The staffing figures to be reported should represent the project workforce on board in all or any part of the last payroll period preceding the end of July.

The report shall be submitted no later than August 15 to the agency (contract owner) compliance officer.

ARIZONA DEPARTMENT OF TRANSPORTATION

BUSINESS ENGAGEMENT AND COMPLIANCE OFFICE

Disadvantaged Business Enterprises (DBE)

Good Faith Efforts (GFE) Guide

For Construction Projects

For use in bidding federally funded Arizona Department of Transportation (ADOT) projects subject to the Disadvantaged Business Enterprises (DBE) Program.

The purpose of the GFE Guide is to help Bidders understand the type of documentation that is required if the Bidder has indicated on the *DBE Assurance Form* that the goal will not be met. GFE documentation must be submitted within seven (7) calendar days following the bid opening. Failure to submit good faith effort documentation within the required time period will render the bid non-responsive.

For questions about this guide or any components of the DBE Good Faith Effort, please contact the ADOT Business Engagement and Compliance Office (BECO) at (602) 712-7761 or ContractorCompliance@azdot.gov.

DISADVANTAGED BUSINESS ENTERPRISES GFE GUIDE

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SECTION 1.0 PURPOSE

This guide contains suggested information and forms bidders can use to help prepare good faith effort documentation. Good faith efforts must be performed well in advance of bid opening.

1.01 CRITICAL INITIAL GFE REQUIREMENTS

1. **CONTACT BECO FOR ASSISTANCE** - As soon as the bidder is aware it is unable to meet the goal, the bidder must contact BECO for assistance. Any solicitations made to interested DBEs must be done no less than ten (10) calendar days prior to bid opening.
2. **DO NOT CHANGE POSITION AFTER BID PROPOSAL** – If the bidder certifies that it has been unable to meet the goal and has made a good faith effort, the bidder cannot change its position after submission of the bid and claim to have met the established goal.

As specified in *Section 13.0 Submission with Bids* of the Disadvantaged Business Enterprises (DBE), Contract Special Provisions (EPRISE, 07/01/16), all Bidders shall submit information to demonstrate that good faith efforts to meet the DBE goal has been made if their *Disadvantaged Business Enterprise Assurances* certificate (Section 4.01 Exhibit A) indicates that the DBE goal will not be met.

1.02 GFE DOCUMENTATION REVIEW

All Bidders are encouraged to consider this GFE Guide. Reviews of GFE documentation will focus on items identified in Section 5.0 of this guide. The items in Section 5.0 are not intended to be an exclusive or exhaustive checklist. Other factors or types of efforts documented shall be relevant in appropriate cases.

SECTION 2.0 GOOD FAITH EFFORT SUBMITTAL

2.01 GFE SUBMISSION

The bidder may submit its documentation one of three ways:

1. Hard copy to: Business Engagement & Compliance Office
1801 W. Jefferson St. Ste. 101 (MD 154A)
Phoenix, AZ 85007
2. Fax to: (602) 712-8429
3. Email to: contractorcompliance@azdot.gov – Please be sure that all emails reach its destination by 4:00 PM of the final submission day (usually 5 days after bid opening).
Emailed documentation received after 4:00 PM will not be included in the GFE review.

2.02 GFE LETTER

The letter should include the following information:

- Project Name
- Project TRACS Number
- Federal Project Number
- Name of person submitting documentation
- Phone Number
- Signature
- Company Name
- Street Address
- City, State, Zip Code
- Telephone number
- Fax number
- Email address
- Contact Person
- Contact Person's Telephone Number

The letter should include an overview of good faith efforts and any necessary explanations of the documentation submitted.

SECTION 3.0 DBE GOAL NOTICE

3.01 NOTICE TO BIDDERS

The DBE goal is project-specific and is listed in the "Notice to Bidders."

In the Notice to Bidders:

THIS IS A FEDERAL AID CONTRACT. THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT GOAL IS [X.XX %]. YOU MUST MEET THIS DBE GOAL AND/OR PROVIDE ADEQUATE GOOD FAITH EFFORT DOCUMENTATION AS OUTLINED IN THESE SPECIAL PROVISIONS. TO COMPLY WITH ADOT'S DBE PROGRAM GOOD FAITH EFFORT, THE BIDDER MUST TAKE CERTAIN ACTIONS A MINIMUM OF FIFTEEN (15) DAYS PRIOR TO BID OPENING.

All Good Faith Effort documentation must be received by BECO no later than 4:00 P.M. on the seventh calendar day following the bid opening.

Failure to submit good faith effort documentation within the required time period will render the bid nonresponsive. Refer for specific bid requirements to the Disadvantaged Business Enterprises (DBE), Contract Special Provisions (EPRISE, 07/01/16)

For Good Faith Effort assistance, please contact BECO at (602) 712-7761 or email ContractorCompliance@azdot.gov.

SECTION 4.0 DBE ASSURANCE CERTIFICATE

4.01 EXHIBIT A

This form is included in the electronic bid documents and shall be completed and submitted as part of the bid submittal. The form is used to identify if a Bidder can or cannot meet the DBE goal required on the contract. Bids submitted with altered, incomplete or unsigned form will be considered nonresponsive.

**DISADVANTAGED BUSINESS ENTERPRISE
ASSURANCE**

The undersigned, fully cognizant of the requirements and of the goal established, hereby certifies that in the preparation of this bid for federal aid project

Project No: _____

Project Name: _____

Exhibit A

(CHECK ONE)

_____ The established goal for DBE participation will be met and agreements have been made with certified DBEs, or

_____ The bidder has been unable to meet the goal prior to the submission of the bid and has made good faith efforts to do so.

THIS AFFIDAVIT MAY NOT BE REVISED OR CORRECTED AFTER SUBMISSION OF THE BID.

In accordance with the Special Provisions, the bidder shall specify its DBE participation on the "DBE Intended Participation Affidavit", or provide documentation of its good faith efforts, by 4:00 p.m. on the fifth working day following the bid opening. The apparent low bidder shall obtain the required affidavit from the Business Engagement & Compliance Office , 1135 N. 22nd Avenue (second floor), Phoenix, AZ, 85009, following the opening of bids.

Print Name of Firm

Print Name of Authorized Officer of Firm

Signature of Authorized Officer of Firm

Title

SECTION 5.0 GOOD FAITH EFFORTS

GFE documentation, identified herein, to be provided by Bidders as part of Good Faith Effort will assist ADOT and its Subrecipients/Subgrantees/Local Public Agencies (LPAs) in determining whether the Bidder has performed its due diligence, took all necessary and reasonable steps to secure DBE participation for the contract pursuant to DBE Contract Special Provisions (EPRISE 07/01/16), *Section 15.0 Documented Good Faith Effort* and [Appendix A to Part 26](#). BECO will review the GFE documentation and will recommend to the State Engineer whether the Bidder has made satisfactory good faith efforts to secure sufficient DBE participation to meet the contract goal. The Business Engagement and Compliance Office will make the final determination of Bidder’s meeting (or not meeting) the GFE requirements.

The burden of proof rests with the Bidder.

The following sections are a restatement of the Good Faith Efforts outlined in *Section 15.0 Documented Good Faith Effort* of the DBE Special Provisions (EPRISE 07/01/16). Additional guidance over what is outlined in the provisions is provided herein, along with documentation examples.

The types of actions Bidders take and the documentation necessary to establish good faith efforts to meet the DBE goal can include, but not limited, to the following activities (Sections 5.01, 5.02, etc.).

5.01 CONTACT BECO IF UNABLE TO MEET DBE GOAL

Purpose: To communicate with BECO prior to the submission of bids, either by e-mail, telephone, or any other communication avenue to inform BECO of the firm’s difficulty in meeting the DBE goals on a given project, and request assistance.

Action: Contact BECO at the first indication of not being able to locate DBEs for a specific project. The bidder must document its contact with BECO, indicate the type of contact, the date and time of the contact, the name of the person(s) contacted, and any details related to the communication. The contact must be made in sufficient time before bid submission to allow BECO to provide effective assistance.

The bidder will not be considered to have made good faith efforts if the bidder failed to contact BECO.

Document and retain all communications (e.g., phone, fax, email, mail) conducted with BECO staff.

SECTION 5.01	CONTACT BECO	EXAMPLE
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Occurrence	Date	BECO Staff Name or Email	Bidder’s Contact Name	Comment
1.				
2.				
3.				

5.02 SOLICIT THROUGH ALL REASONABLE AND AVAILABLE MEANS

Purpose: To identify all reasonable and available activities the Bidder performed to solicit the interest of all certified DBEs who have the capacity and ability to perform work on the project.

Action: Identify and list all activities the Bidder engaged in to solicit DBEs using all reasonable and available means.

Bidder’s GFE Documentation:

- 1) Provide a list of activities performed to solicit DBEs.
- 2) Identify and **provide documentation:**
 - a. Activity undertaken, such as:
 - advertising – copies or print screens of online project advertisement (See *Section 5.03 Selecting Portions of Work* for example of an advertisement),
 - pre-bid meeting sign-in sheets,
 - business matchmaking meetings or events – proof of attendance,
 - written notice(s) sent – letters, fax or emails to DBEs,
 - any other market research conducted to identify and solicit DBE contractors and suppliers
 - b. Date action was taken;
 - c. Name of DBEs that showed interest;
 - d. Date of Bidder’s follow-up with the interested DBEs

SECTION 5.02	SOLICITING	EXAMPLES
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Bidder Activity (Advertising, Pre-bid meeting, business event, written notice, etc.)	Date	Name of DBE(s) Interested	Date Bidder Follow-up

Example of Written Notice with Fax Transmittal

HP LaserJet 3100
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for
ABC Construction Company
623-321-7655
January – 29 – 13 2:34 PM

Job	Start Time	Usage	Phone Number or ID	TYPE	Pages	Mode	Status
542	1/29 2:34pm	0'35"	19257484577	Send	1/1	EC144	Complete

ABC Construction Company
123 Main Street
Anytown, CA 98765
925-321-7655 Fax: **925-321-7655**

abconstruction@aol.com

INVITATION TO BID

January 29, 2013

The Electric Shop
1210 Cedar Avenue
Pleasanton, CA 94588

Telephone: 925-748-1327
Fax: 925-748-4577

ABC Construction Company is seeking quotes from qualified MBE/WBE/SBE/OBE/LBE/DVBE businesses and invites your bid/quote on the following listed project/contract:

Project: El Sobrante Area Overlays/Pavement Replacement, El Sobrante, CA
Approx. Value: \$2,415,218
No. of Working Days: 60
Owner: Contra Costa County Bids Due: 2-10-13 @ 2 pm

Seeking all trades including but not limited to: earthwork, asphalt, concrete, rebar, fencing, electrical, fire protect, lath/plaster/drywall, structural steel, mechanical, sheet metal, insulation and other related trades.

We are an equal opportunity employer and intend to seriously negotiate with qualified DBEs for project participation. For assistance in obtaining bonds, lines of credit, and/or insurance please contact Roger Smith. Plans, specifications and requirements for the project are available for review at our office or at the Contra Costa County Public Works Dept. 255 Glacier Drive, Martinez, CA, 94553 and are available online at www.cccounty.us/pwprojects. Please contact us at the above listed number for further information regarding bidding on this project.

Please fax your response to: Rodger Smith at 925-321-7655

We will be bidding Yes _____ No _____

Sincerely,

Rodger Smith
ABC Construction Company

5.03 SELECTING PORTIONS OF WORK

Purpose: To ensure work items are broke out 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.

Action: Identify economically feasible work units to be performed by DBEs

Bidder’s GFE Documentation

- 1) Identify documentation of the following:
 - a. Activity undertaken, such as:
 - List of work items needed to be performed,
 - Breaking large work tasks into partial work items (smaller tasks or quantities),
 - Flexible time frames for performance and delivery schedules

SECTION 5.03	SELECTING PORTIONS OF WORK	EXAMPLE
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Posted in Arizona Builder Exchange website on January 15, 2014

ABC Construction Company is requesting sub-bids from qualified DBE subcontractors, suppliers, manufacturers & truckers for: ADOT Phoenix, AZ

Project: Broadway Area Infrastructure Program Phase 3.A
 Project#: 0662-GR4141-02
 Engineer Est.: \$450,000
 No. Working Days: 30
 Bid Due Date: 2/10/14 at 2 pm

For the following (but not limited to) work items:

- traffic control,
- construction area signs,
- trucking,
- hazardous materials removal,
- grinding,
- striping,
- electrical,
- asphalt, concrete,

If you are interested in bidding on this work or know someone who is, please contact Steve @ 623-321-7654, Fax: 623-321-7655 or email steve@Mail.com
 Plans, Specs, and Requirements for the project are available for review at our office in Anytown or at the ADOT, Phoenix AZ and are available at: <http://www.azdot.gov/projects/Projects>.

For assistance in obtaining bonds, lines of credit, and/or insurance for this project, please contact Steve at the noted phone number.

ABC Construction Company
 123 Main Street Anytown, AZ 85009

Contact: Steve
 Phone: 925-321-7654
 Fax: 925-321-7655
steve@Mail.com

5.04 PROVIDE INTERESTED DBES WITH PROJECT INFORMATION

Purpose: To provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist DBEs in responding to solicitations.

Action: Provide DBEs access to plans, specifications and other contract requirements in a timely manner prior to bid solicitation

Bidder's GFE Documentation:

- 1) Identify in writing and provide documentation of the following:
 - What types of project information did DBEs have access to prior to bid?
 - How were DBEs informed of the availability of project information?
 - When were they notified they had access to project information?
 - Provide copies of advertisements that may explain the above information,
(See *Section 5.03 Selecting Portions of Work* for an advertisement example that informs firms of where project plans are located)
 - Provide screen shots of steps in accessing project information online –screenshots must identify project numbers and/or descriptions

5.05 NEGOTIATE IN GOOD FAITH WITH INTERESTED DBES

Purpose: To ensure that negotiations with interested DBEs were made in good faith by providing evidence as to why additional agreements could not be reached for DBEs to perform work. It is the bidder's responsibility to make a portion of the work available to the DBE subcontractors and suppliers, and to select those portions of work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation.

Action: Provide evidence that good faith negotiations took place with interested DBEs.

Pro forma mailings to DBEs requesting bids are not alone sufficient to constitute good faith efforts.

A bidder 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 in itself sufficient reason for a bidder's failure to meet the 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 the bidder of the responsibility to make good faith efforts. However, prime contractors are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. The bidder must submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract. The Department will review whether DBE prices were substantially higher and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime contractor. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

Bidder's GFE Documentation:

- 1) Identify DBEs that were considered for negotiations and include the following information:
 - a. Name of each business;
 - b. Telephone number of each business;
 - c. Contact person name negotiated with;
 - d. A description from the plans and specifications of work selected for subcontracting

- 2) Provide documentation of the following:
 - ALL** Quotes from DBEs
 - ALL** Quotes from non-DBEs that were considered alongside DBE firms

SECTION 5.05	NEGOTIATE IN GOOD FAITH	EXAMPLE
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NEGOTIATIONS LOG EXAMPLE

ABC Construction Company
 Contact List
 Discovery House Facility

Negotiations Made By
 Rodger Smith

Only List DBEs

Name of Business	Address	Telephone Number	Contact Person	Task Description	Quotes Rec'd?	Considered for project?
Arrow Landscape	567 James St. Anytown, AZ	602-727-4915	Andrew Lang	Erosion Control & Seeding	Yes	No
Bear Valley Contractors	25 Teal St, Anytown, AZ	520-282-3404	Todd Lewinsky	Sidewalk, Curb & Gutter	No	No
B&C Fence Company	456 Apple Dr. Anytown, AZ	480-578-5026	Dorothy Smith	Fencing	Yes	Yes
Delta Cement Co.	10 Banks Ave. Anytown, AZ	623-297-5666	Bob Valentine	Material Supplier	Yes	No
Ebarra Landscape Services, Inc.	345 Ortiz Rd. Anytown, AZ	623-451-2105	Troy Torres	Erosion Control & Seeding	No	No
Flores Grading & Paving	789 Zion Dr. Anytown, AZ	602-383-2928	Ken Overton	Sidewalk, Curb & Gutter	Yes	Yes
Gateway Electric, Inc.	1001 Bakers Anytown, AZ	602-222-2873	Christina Lee	Traffic Signals	No	No
Hertz Air Conditioning Co., Inc.	219 Hightower Anytown, AZ	480-522-8727	Ellen Young	HVAC	No	No
Itachi Landscape	160 Crane St. Anytown, AZ	602-647-8955	Dan Kovaski	Erosion Control & Seeding	Yes	No
Jett Construction, Inc.	456 Anchor Rd. Anytown, AZ	602-364-8081	Rita Holt	Sidewalk, Curb & Gutter	Yes	No

QUOTE EXAMPLE

ABC Construction Company

925-321-7654

Owned By U.S. Perma, Inc.

925-321-7655 Fax

State License No. 439330 – Since 1962

Ceramic Mosaic Quarry Marble Granite Pavers Thin Brick

Date: February 4, 2013

Quote: 06190311

City: Martinez

QUOTE

Reference: DISCOVERY HOUSE FACILITY

Attention: Estimating

Base Bid: \$40,938.00

Addendum's: 1 only

Inclusions

Ceramic tile lobby and restrooms. Mortar floor at restrooms, cement backer board at walls and lobby floor (included at \$6,435.00). Waterproof membrane at restrooms floors.

Exclusions

Demo & Prep

This is a price quote confirmation for the aforementioned project as set forth in the inclusions section of this form. This quote is in accordance with plans, drawings, and specifications as presented to us, or as specified by your company. Shop drawings are not included unless specified above. All labor, materials, taxes, freight, equipment, etc., necessary to attain a complete product are included unless otherwise stated. This bid shall be valid for a period of sixty (60) days.

Thank you,

John Smith

123 Main Street
Anytown, CA 94553

5.06 HAVING SOUND REASON FOR REJECTING DBES

Purpose: To not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.

Action: The DBE 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 the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

Bidder's GFE Documentation:

- 1) Demonstrate that DBEs were rejected for sound reasons based on a thorough investigation of their capabilities;
- 2) Provide documentation of the following examples:
 - Past performance
 - Relevant business experience & stability
 - Safety record
 - Business ethic & moral integrity
 - Technical capacity
 - Other factors

5.07 ASSISTING INTERESTED DBES - BONDING, CREDIT, INSURANCE

Purpose: To assist interested DBEs in obtaining bonds, lines of credit, and insurance as required by ADOT/Subrecipient/LPA/Grantee or Bidder.

Action: Assist interested DBEs in such areas as obtaining bonding, lines of credit, or insurance and providing any technical assistance or information related to the plans, specification, and requirements of the project, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.

Bidder’s GFE Documentation:

- 1) If assistance was given, list each certified DBE to which such assistance was provided and include the following information:
 - a. Name of the DBE;
 - b. Date assistance was provided;
 - c. DBE contact person;
 - d. Telephone number of contact person with DBE; and
 - e. Explanation of assistance provided to the DBE (e.g., obtaining bonding, lines of credit, or insurance).

SECTION 5.07	BONDING, CREDIT, INSURANCE	EXAMPLE
---------------------	-----------------------------------	----------------

BONDS, LINES OF CREDIT AND INSURANCE

DBE firm:	Date:
Contact person:	Telephone #:
Assistance offered:	

DBE firm:	Date:
Contact person:	Telephone #:
Assistance offered:	

5.08 ASSISTING INTERESTED DBES – EQUIPMENT, SUPPLIES, MATERIALS, RELATED SERVICES

Purpose: To assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance and services.

Action: Assist interested DBEs in such areas as obtaining equipment, supplies, materials, or related assistance or services related to the plans, specification, and requirements of the project, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.

Bidder’s GFE Documentation:

- 1) If assistance was given, list each certified DBE to which such assistance was provided and include the following information:
 - a. Name of the DBE;
 - b. Date assistance was provided;
 - c. DBE contact person;
 - d. Telephone number of contact person with DBE; and
 - e. Explanation of assistance provided to the DBE (e.g., obtaining equipment, supplies, materials, or related assistance or services).

SECTION 5.08	EQUIPMENT, SUPPLIES, MATERIALS, RELATED SERVICES	EXAMPLE
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EQUIPMENT, SUPPLIES, MATERIALS, RELATED ASSISTANCE OR SERVICES

DBE firm:	Date:
Contact person:	Telephone #:
Assistance offered:	

DBE firm:	Date:
Contact person:	Telephone #:
Assistance offered:	

5.09 MINORITY/WOMEN COMMUNITY ORGANIZATIONS

Purpose: To effectively use the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; other organizations as allowed for providing assistance in the recruitment and placement of DBEs.

Action:

- 1) Contact minority/women community organizations, DBE-related agencies recruitment/placement organizations, or other groups, for assistance in contacting, recruiting, and using DBE subcontractors, suppliers, manufacturers, and truckers. Contact should occur in a manner that allows interested DBEs to respond within **ten (10) calendar days** prior to bid opening.

Here are some example organizations that are available for assistance with DBE recruitment. This is not a complete list and bidders are expected to contact additional organizations to assist in finding DBEs.

Ricardo Carlo, President

Associated Minority Contractors of America

2630 S. 20th Place

Phoenix, AZ 85034

Office: (602) 495-0026 Fax: (602) 252-3749

Cell: (623) 521-8195

&

3941 E. 29th Street, Suite 605

Tucson, AZ 85711

Toll Free: (877) 619-0026

Email: amca@qwestoffice.net

Web: www.amcaaz.com

Kaaren-Lyn Morton, Business Consultant

Minority Business Development Agency

Business Center

255 E. Osborn Road, Suite 202

Phoenix, AZ 85012-2358

Office: (602) 248-0007, Ext. 216 Fax: (602) 279-8900

Cell: (480) 343-2799

Email: kaaren@phoenixmbdcenter.com

Web: www.phoenixmbdcenter.com

Operated by the Arizona Hispanic Chamber of Commerce Foundation

Business Engagement & Compliance Office

Arizona Department of Transportation

1801 W. Jefferson St. Ste. 101 (MD 154A)

Phoenix, AZ 85007

Office: (602) 712-7761 Fax: (602) 712-8429

Email: DBESupportiveServices@azdot.gov

The Arizona Unified Transportation Registration and Certification System (AZ UTRACS) online database (<http://www.azutracs.com/>) contains an inventory of DBEs. The database can be queried to provide a list of certified DBEs in specialty areas or discipline-specific.

2) Written requests for assistance must contain:

- a. Areas of work to be subcontracted;
- b. Bidder Name and contact person's name;
- c. Contact person's telephone number;
- d. Description of availability of plans, specifications, and other requirements for the project; and
- e. Bidder's policy concerning assistance to subcontractors (including suppliers, manufacturers, and truckers) in obtaining bonds, lines of credit, insurance, equipment, supplies, materials, related assistance and services.

Bidder's GFE Documentation:

- 1) Submit a copy of each request for assistance in recruiting DBEs.
- 2) Faxed copies must also include the fax transmittal confirmation slip showing the date and time of transmission.
- 3) Mailed letters must include copies of the metered envelopes or certified mail receipts.
- 4) Provide telephone number of each agency.
- 5) Provide contact person with the agency.
- 6) Provide response received from the agency (i.e., lists, Internet page, letters, emails, etc.).
- 7) Furnish any additional data to support demonstration of good faith efforts to contact, recruit, and utilize DBEs on this project.

SECTION 5.09	MINORITY/WOMEN COMMUNITY ORGANIZATIONS	EXAMPLE
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DBE QUOTE SOLICITATION REQUEST

(Enter: COMPANY NAME) is soliciting quotes from certified DBEs for the: (Enter: PROJECT LOCATION)
 (Example: Payson Winslow Highway SR 87 Limestone Wash Bridge)

Bidding Date: (Example: NOVEMBER 8, 2013)
 Project No: (Example: STP-BR-087-C(203)T)
 Tracs No: (Example: 000 YU YYU SS86101C)
 Bids due Contractor: (Example: NOVEMBER 4, 2013)

DBEs interested in bidding this project should contact:
 (Example: John Doe at 602 777 0000 or via email estimator@live.com)

(Enter: COMPANY NAME) is interested in subcontracting the following categories of work:

(Enter bid items for bid below)

- Concrete
- Seeding
- Paving
- Trucking
- Excavation
- Survey
- Traffic Control
- Guardrail
- Permanent Signs
- Excavation
- Lead Abatement
- Pavement Marking

***Please include any additional information that would assist efforts in DBE participation and a web-friendly company logo and Point of Contact.**

Bids documents can be found at: (Enter: COMPANY WEBSITE)

For questions regarding the ADOT DBE Supportive Services Program please contact us at DBEsupportiveservices@azdot.gov.

SECTION 6.0 APPENDIX A TO PART 26 – GUIDANCE CONCERNING GFES

The following appendix from 49 CFR Part 26 is a guide to assist agencies in determining what a good faith effort is.

APPENDIX A TO PART 26 — GUIDANCE CONCERNING GOOD FAITH EFFORTS

Note: “YOU” means the Agency (ADOT) in the following section of this requirement.

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement 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.
- II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's 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. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should

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 (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
- 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 with their offer for the subcontract.
- D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

(2) A bidder 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 in itself sufficient reason for a bidder's 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 the bidder 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. (1) 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 status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient 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.

- V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in §26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

- VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

Note: Contacting BECO (602 712-7761) for assistance in identifying certified DBEs that can perform work on a contract is also considered a strong factor in making good faith efforts.

City of Phoenix
Title VI/Non-Discrimination Assurances
DOT Order No. 1050.2A

The *City of Phoenix* (herein referred to as the "Recipient"), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through *Federal Highway Administration* and *Arizona Department of Transportation*, is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964)

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its *Federal Aid Highway Program*.

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard

to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all *Federal Aid Highway Program* and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*"The **City of Phoenix**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:


- a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the **City of Phoenix** also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing *Federal Highway Administration* or *Arizona Department of Transportation* access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the *Federal Highway Administration* or *Arizona Department of Transportation*. You must keep records, reports, and submit the material for review upon request to *Federal Highway Administration*, *Arizona Department of Transportation*, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The **City of Phoenix** gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the *Federal Highway Administration* and *Arizona Department of Transportation*. This ASSURANCE is binding on Arizona, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the *Federal Aid Highway Program*. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

by  _____
Jeff Barton, City Manager

DATED 6/22/23

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *Federal Highway Administration or the Arizona Department of Transportation*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient, the *Federal Highway Administration or Arizona Department of Transportation* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration or Arizona Department of Transportation*, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation* 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 by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the **City of Phoenix** will accept title to the lands and maintain the project constructed thereon in accordance with *Title 23*, United States Code the Regulations for the Administration of *Federal Aid for Highways*, and the policies and procedures prescribed by the *Arizona Department of Transportation, Federal Highway Administration* of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252;42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **City of Phoenix** all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto **City of Phoenix** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the **City of Phoenix**, its successors and assigns.

The **City of Phoenix**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the **City of Phoenix** will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the ***City of Phoenix*** pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, *the City of Phoenix* will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the ***City of Phoenix*** will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the ***City of Phoenix*** and its assigns*.

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the **City of Phoenix** pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the **City of Phoenix** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the **City of Phoenix** will there upon revert to and vest in and become the absolute property of the **City of Phoenix** and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

**CONSTRUCTION AND PROFESSIONAL SERVICES/DESIGN CONTRACTS
PROMPT PAY AND PAYMENT REPORTING PROVISIONS**

** FOR USE ON LPA FEDERAL AID PROJECTS **

(07/24/2023)

MEASUREMENTS AND PAYMENT:

(A) Partial Payments:

If satisfactory progress is being made, the contractor shall receive a payment based on the amount of work completed. Progress payments may be made by the LPA/Subrecipient Procurement Office to the contractor on the basis of an approved estimate of the work performed during a preceding period of time. The progress payments will be paid on or before 14 days after the estimate of the work is approved. The estimate of the work will be deemed received by the LPA/Subrecipient Procurement Office on submission to the person designated by the LPA/Subrecipient Procurement Office for the submission, review or approval of the estimate of the work. The LPA/Subrecipient Procurement Office by mutual agreement may make progress payments on contracts of less than 90 days and will make monthly progress payments on all other contracts. Payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under the contract may include payment for material and equipment.

An estimate of the work submitted will be deemed approved and certified for payment after seven days from the date of submission unless before that time the LPA/Subrecipient Procurement Office or Designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the contract. The contractor shall work with the LPA/Subrecipient or the LPA/Subrecipient Designee to finalize monthly estimate. The progress payments will be paid on or before 14 days after the estimate of the work is certified and approved in accordance with Arizona Revised Statutes Section 34-221.

The contractor shall pay to the contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven days of receipt of each progress payment the respective amounts allowed the contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest.

No contract for construction services may materially alter the rights of any contractor, subcontractor, or material supplier to receive prompt and timely payment.

A subcontractor may notify the LPA/Subrecipient Procurement Office in writing requesting that the subcontractor be notified by the Subrecipient Procurement Office in writing within five days from payment of each progress payment made to the contractor.

(B) No Retainage on Progress Payments:

- (1) This is a federally-funded project. Therefore, notwithstanding A.R.S. § 34-221, the LPA/Subrecipient Procurement Office will not withhold retainage from progress payments. Neither the contractor, nor the subcontractor of any tier, may withhold any retainage on progress payments to subcontractors or suppliers of any tier.
- (2) This provision does not prevent the LPA/Subrecipient Procurement Office from withholding retainage or reducing payments where otherwise provided in the contract. These cases may include, but are not limited to:
 - (a) Delayed work;
 - (b) Work that is not satisfactorily performed; or
 - (c) A failure to submit necessary reports, certifications, or documents to the LPA/Subrecipient Procurement Office.

(C) Subcontractor Payments:

(1) No Retainage:

- (a) This is a federally-funded project. Therefore, notwithstanding A.R.S. § 34-221, neither the contractor, nor the subcontractor of any tier, may withhold any retainage on progress payments to subcontractors or suppliers of any tier.
- (b) Pursuant to Subsection (B)(2) of this Specification, the contract does not prevent the LPA/Subrecipient Procurement Office from withholding retainage or reducing payments where otherwise provided in the contract. These cases may include, but are not limited to:
 - (i) Delayed work;
 - (ii) Work that is not satisfactorily performed; or
 - (iii) A failure to submit necessary reports, certifications, or documents to the LPA/Subrecipient Procurement Office.
- (c) When the LPA/Subrecipient Procurement Office withholds retainage or reduces payments under Subsection (B)(2) of this Specification, the contractor may withhold retainage on progress payments to subcontractors or suppliers of any tier. However, the contractor may only withhold a reasonable amount of retainage.
- (d) For the purpose of this section, a “reasonable amount” of retainage is based on the subcontractor’s involvement or the supplier’s involvement in the cause for the LPA/Subrecipient Procurement Office’s reduction of payment. The final amount retained from all subcontractors and suppliers shall not be higher than the amount retained by the LPA/Subrecipient. However, tier subcontracts shall include provisions that comply with this section.

(2) No Set-offs Arising from Other Contracts:

If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.

(3) Partial Payment:

The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the LPA/Subrecipient Procurement Office. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(4) Final Payment:

The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(5) Payment Reporting:

For the purposes of this subsection "Reportable Contracts" means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any tier with a DBE material supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the LPA DBE System which can be accessed at AZ UTRACS on the Arizona Transportation Business Portal at www.azutracs.com. No later than fifteen calendar days after the preconstruction conference, the contractor shall log into the system and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter the subcontractor information in the LPA DBE System. Reportable contracts information shall be entered into the system no later than five calendar days after approval by the LPA/Subrecipient Procurement Office.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. The contractor shall provide information for payments made on all Reportable Contracts during the previous month by the last day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the LPA DBE System.

In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract within 15 days of receipt of electronic payment notification and the contractor shall actively monitor the system to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the system between payment amounts it reports and payment confirmation amounts reported by others.

The contractor shall ensure that all Reportable Contract payment activity is in the LPA DBE System. This includes all lower-tier Reportable Contracts.

The contractor shall maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the system.

The contractor shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

(a) Sanctions for Inadequate Reporting:

For each month that the contractor fails to submit timely and complete payment information the LPA/Subrecipient Procurement Office will retain \$5,000 as sanctions from the monies due to the contractor. After 90 consecutive days of non-reporting, the sanctions will increase to \$10,000 for each subsequent month which the contractor fails to report until the information is provided. These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

(6) Completion of Work:

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the LPA/Subrecipient Procurement Office.

(7) Disputes:

If there is a discrepancy between what is reported by the contractor in the LPA DBE System and what the subcontractor indicates, an alert email will automatically be sent to the contractor. The email will be sent to the email address provided by the contractor in the LPA DBE System. It is the contractor's responsibility to ensure that the email address in the system is kept current.

The contractor shall provide a verifiable explanation of the discrepancy in the LPA DBE System as early as practicable but in no case later than seven days after the date of the alert email.

The LPA/Subrecipient will determine whether the contractor has acted in good faith concerning any such explanations. The LPA/Subrecipient and ADOT BECO reserves the right to request and receive documents from the contractor and all subcontractors of any

tier, in order to determine whether prompt payment requirements are met.

The contractor shall implement and use the dispute resolution process outlined in the subcontract or by following the LPA/Subrecipient escalation process, to resolve payment disputes.

(8) Non-compliance:

Failure to make prompt partial payment, or prompt final payment including any retention, within the time frames established above, will result in remedies, as the LPA/Subrecipient Procurement Office deems appropriate, which may include but are not limited to:

- (a) Sanctions: These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.
 - (i) The LPA/Subrecipient Procurement Office will withhold two times the disputed dollar amount not paid to each subcontractor.
 - (ii) If full payment is made within 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the amount withheld by the LPA/Subrecipient Procurement Office will be released.
 - (iii) If full payment is made after 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the LPA/Subrecipient Procurement Office will release 75 percent of the funds withheld. The LPA/Subrecipient Procurement Office will retain 25 percent of the monies withheld as sanctions.

- (b) Additional Remedies. If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more projects within 24 months, the LPA/Subrecipient Procurement Office may, in addition, invoke the following remedies:
 - (i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors, subject to the sanctions described in paragraph (a) above,
 - (ii) Terminate the contract for default,
 - (iii) Disqualify the contractor from future bidding, temporarily or
 - (iv) permanently, depending on the number and severity of violations, if applicable.

In determining whether sanctions will be assessed, the extent of the sanctions, or additional remedies assessed, the LPA/Subrecipient will consider whether there have been other violations on this or other contracts, whether the failure to make prompt payment was due to circumstances beyond the contractor's control, and other circumstances. The contractor may, within 15 calendar days of receipt of the decision of the LPA/Subrecipient, escalate the decision according to the contract's escalation process.

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. 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 such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements (1) Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. 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 any Federal 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.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal 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.

2. 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. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize 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 this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 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 paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

REQUIRED CONTRACT PROVISIONS:

BIDDING REQUIREMENTS AND CONDITIONS:

Suspension from Bidding:

The City may suspend any person and any subsidiary or affiliate of any person from further bidding to the City and from being a subcontractor to a contractor or supplier or otherwise participating in the work:

- (A) If that person or any officer, director, employee or agent of that person is convicted, in this State, of any other jurisdiction, of a crime involving any of the following elements or actions:
 - (1) Entering into any contract, combination, conspiracy or other unlawful act in restraint of trade or commerce,
 - (2) Knowingly and willfully falsifying, concealing, or covering up a material fact by trick, scheme, or device,
 - (3) Making false, fictitious, or fraudulent statements or representations,
 - (4) Making or using a false writing or document knowing it to contain a false, fictitious, or fraudulent statement or entry.
 - (5) Misrepresentation or false statement on any application for bonding:
 - (6) Misrepresentation or false statement on any application for prequalification; or
- (B) If the City makes a finding of any of the above or finds that the contractor is not a Responsible Bidder or a Responsible Contractor.

Under this Subsection, a person means any individual, partnership, joint venture, corporation, association or other entity formed for the purpose of doing business as a contractor, subcontractor or supplier.

The signature of the bid proposal by a submitter constitutes the submitter's certification, under penalty of perjury under the laws of the United States, that the submitter, or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds, has not been, or is not currently, under suspension, debarment, voluntary exclusion or been determined ineligible by any federal agency within the past three years. Signature of the bid proposal also certifies, under penalty of perjury under the laws of the United States, that the submitter does not have a proposed debarment pending. In addition, signature of the bid proposal certifies that the submitter has not been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

Any exceptions to the above paragraph shall be noted and fully described on a separate sheet and attached to the bid proposal.

Non-Collusion Certification:

Bidders making their submittal shall complete the "AFFIDAVIT BY CONTRACTOR CERTIFYING THAT THERE WAS NO COLLUSION IN BIDDING OF CONTRACT" form included within these project specifications. This form shall be executed by or on behalf of the person, firm, association of corporation submitting the bid, in the following form:

The bidder certifies that, pursuant to Subsection 112(c) of Title 23, United States Code, and Title 44, Chapter 10, Article 1 and Title 34, Chapter 2, Article 4 of the Arizona Revised Statutes, neither it nor anyone associated with the company, firm, corporation, or individual has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of full competitive bidding in connection with the above referenced project.

SCOPE OF WORK:

Intent of Contract:

(A) COVENANT OF GOOD FAITH AND FAIR DEALING

This contract imposes an obligation of good faith and fair dealing in its performance and enforcement.

The Contractor and the City, with a positive commitment to honesty and integrity, agree to the following mutual duties:

- (1) Each will function within the laws and statutes applicable to their duties and responsibilities.
- (2) Each will assist in the other's performance.
- (3) Each will avoid hindering the other's performance.
- (4) Each will proceed to fulfill its obligations diligently.
- (5) Each will cooperate in the common endeavor of the contract.

(B) VOLUNTARY PARTNERING

The City of Phoenix Street Transportation Department intends to encourage the foundation of a cohesive partnership with the Contractor and its principal subcontractors and suppliers. This partnership will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives are effective and efficient contract performance and completion within budget, on schedule, and in accordance with plans and Specifications.

This partnership will be bilateral in makeup, and participation will be totally voluntary.

To implement this partner initiative prior to starting work, the Contractor's management personnel and the City's Engineering Supervisor will initiate a partnering development session. Persons required to be in attendance will be the City's Engineering Supervisor and key project personnel; the prime Contractor's on-site project manager and key project personnel; and principal subcontractor and supplier representatives.

Follow-up workshops may be held periodically throughout the duration of the contract as agreed by the Contractor and the City.

The establishment of a partnership charter on a project will not change the legal relationship of the parties to the contract, nor relieve either party from any of the terms of the contract.

(C) VALUE ENGINEERING PROPOSALS

Value Engineering proposals may be submitted to the Engineer for modifying the plans, specifications, or other requirements of the contract for the sole purpose of reducing the total cost of construction without impairing in any manner the essential functions or characteristics of the project, including but not limited to service life, economy of operations, ease of maintenance, desired appearance, or design and safety standards.

After execution of the contract, a value engineering proposal may be recommended by the Contractor. A proposal may include modifications to the plans or specifications, construction phasing or procedures, or other contract requirements.

The Engineer reserves the right to make alterations to the contract, in accordance with MAG Specification Section 104.2.1. The Engineer will notify the Contractor in writing of any alterations to the contract. Such alterations shall not be eligible for inclusion in any value engineering initiatives or joint proposals.

A savings resulting solely from the elimination or reduction in quantity of a bid item will not be considered as a value engineering

proposal. A savings resulting from the elimination or reduction in quantity of a bid item specified as part of a value engineering proposal will be considered.

The Contractor shall identify a value engineering proposal as such, and it shall contain, at a minimum, the following:

- (A) A description of both the existing contract requirements for performing the work and the proposed changes.
- (B) All engineering drawings and computations necessary for a thorough and expeditious evaluation.
- (C) An itemization of the existing contract requirements that must be changed if the proposal is adopted, and a recommendation as to the manner in which the change should be made.
- (D) A detailed estimate of the cost of performing the work under the existing contract and under the proposed changes, including the cost of implementing the changes.
- (E) The contract items affected by the proposed changes and any variations in quantities resulting from the changes, and any new items not listed in the bid schedule.
- (F) An objective estimate of any effects the proposal will have on collateral costs to the City, costs of related items, and costs of maintenance and operation.
- (G) A statement as to the effect that the proposal will have on the time for the completion of the project.
- (H) A statement in which the Engineer and Contractor jointly establish an acceptable period of time for evaluation of the proposal, and execution of a supplemental agreement. Any delays or extensions must be jointly approved by the Engineer and Contractor, or such proposal shall be considered rejected.
- (I) A statement as to any contract time extension or time related costs which will be requested by the Contractor as a condition for implementing the proposed changes.

The City will not be liable for any delay in executing a supplemental agreement, nor for any failure to accept a value engineering proposal.

The Engineer will notify the Contractor in writing regarding acceptance or rejection of a proposal. The City's decision will be final.

If the value engineering proposal is accepted in whole or in part, the necessary contract modifications and contract price adjustments will be made by the execution of a supplemental agreement which will specifically state that it is executed pursuant to the provisions of this subsection. The City will be the sole judge of the acceptability of a proposal, and of the estimated net savings in construction costs from the adoption of all or any part of the proposal.

The Contractor shall not perform any work described in the value engineering proposal until a supplemental agreement incorporating the proposal has been executed, or until the Contractor has been given written approval by the Engineer. If the supplemental agreement has not been executed, or the Contractor has not been given written approval on or before the date jointly determined above in paragraph (H), the proposal shall be deemed rejected.

The executed supplemental agreement shall incorporate the changes in the plans, specifications, or other requirements of the contract which are necessary to permit the proposal, or such part of it which has been accepted, to be put into effect, and shall include any conditions upon which the City's approval thereof is based. The executed supplemental agreement shall also extend the time for the completion of the contract if, the extension was requested by the Contractor as a condition for implementing the proposal, and such an extension has been deemed warranted by the City.

The executed supplemental agreement shall also establish the estimated net savings in the cost of performing the work attributable to the value engineering proposal. In determining the net savings, the Engineer reserves the right to disregard the contract bid prices if, in the Engineer's judgement, such prices do not represent a fair measure of the value of the work to be

performed or deleted. The executed supplemental agreement shall provide that the Contractor be paid 50 percent of the estimated net savings amount. Administrative or construction engineering costs by the City will not be included in the determination of the estimated net savings. Changes in overhead costs by the Contractor resulting from the proposal, including related time reductions or extensions, shall not be allowed.

The amount specified to be paid to the Contractor in the executed supplemental agreement shall constitute full compensation to the Contractor for the value engineering proposal and the performance of the work thereof pursuant to the said supplemental agreement.

Upon acceptance of a value engineering proposal, any restrictions imposed by the Contractor on its use or on disclosure of the information shall become void, and the City thereafter shall have the right to use all or any part of the proposal without obligation or compensation of any kind to the Contractor.

ALTERATION OF WORK:

Suspensions of Work Ordered by the Engineer:

If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

CONTROL OF WORK:

Claims:

(A) Notice of Claim:

It is the purpose of this subsection that claims for additional compensation and any difference between the parties arising under and by virtue of the contract be brought to the attention of the Engineer at the earliest possible time and at the first responsible level to increase the possibility for such matters to be resolved or for appropriate action to be taken promptly. This section shall be construed to apply to all claims including, but not limited to, claims based on contract clauses as well as claims based on breach of contract or tort.

In the event any basis for additional compensation or time extension is perceived by the Contractor to have occurred, the Contractor shall give the Engineer immediate oral or written notice of such basis for additional compensation or time extension for the earliest possible decision, instruction, notice or action duly taken by the Engineer.

Should the Contractor disagree with any decision, order, instruction, notice, act or omission of the Engineer, the Contractor may submit a Notice of Claim to the Engineer. The Notice of Claim shall be submitted in writing within three working days after the Contractor has learned of the Engineer's action regarding the occurrence or event and before the Contractor begins the work on which he/she based the claim. For projects on which the voluntary partnering process is followed, and the Contractor elects to file

a claim, the Notice of Claim shall be submitted within three working days after the completion of the issue resolution process.

The Notice of Claim shall indicate, insofar as possible, the basis and the nature of the claim. If notification is not given, the Contractor hereby agrees to waive any claim for additional compensation. Within a 10-day period from the submission of the Notice of Claim, the Contractor shall submit in writing a projection of the Contractor's additional costs resulting from the alleged incident. Such costs shall include both present and future costs resulting from the alleged incident.

At the time the Contractor gives written notice of his/her claim, the Contractor shall immediately begin to keep and maintain complete and specific records to the extent possible, including but not limited to, cost records concerning details of the perceived claim.

The Contractor shall give the Engineer access to any such records and, when so requested, shall furnish the Engineer copies of claim documentation.

Unless otherwise agreed to in writing, the Contractor shall continue with and carry on the work and progress during the pendency of any claim, dispute, decision or determination by the Engineer, and any mediation or arbitration proceedings, and the City will continue to make progress payments to the Contractor in accordance with the contract documents.

(B) Submission of Claims:

As promptly as possible following the submission of a Notice of Claim in accordance with Subsection (A) of this section, but in no event later than 30 calendar days after all of the Contractor's costs have been incurred, the Contractor shall submit his/her claim to the Engineer concerning the matter so noticed.

The claim shall set forth clearly and in detail, for each item of additional compensation or extension of time requested, the reasons for the claim, references to applicable provisions of the specifications, the nature and the specific cost ascribed to each element of the claim or for each period of time involved, the basis used in ascribing each such element of cost or for each such period of time, and all other pertinent factual data.

The Contractor shall, insofar as it is possible to do so, promptly furnish any clarification and additional information or data deemed necessary and requested in writing by the Engineer.

(C) Decision on Claims:

The Engineer will make a written decision in relation to any claim presented by the Contractor within the following time frames:

- (1) For an adjustment in compensation, or other contractual dispute between the parties where the amount in controversy is \$200,000.00 or less, 30 calendar days from receipt of the Contractor's claim;
- (2) For an adjustment in compensation or other contractual dispute between the parties where the amount in controversy is more than \$200,000.00, 60 calendar days from receipt of the Contractor's claim.

Unless the Contractor and the Engineer otherwise stipulate in writing to a later time, if the Engineer does not make a decision or determination within the time frames prescribed in this subsection, the claim shall be deemed denied and the Contractor may proceed with the legal remedy prescribed herein.

The decision of the Engineer in relation to the Contractor's claim shall be final unless the Contractor commences arbitration or litigation as follows:

- (1) Where the amount in controversy is \$200,000.00 or less, the Contractor's sole legal remedy shall be arbitration.
- (2) Where the amount in controversy is more than \$200,000.00, the Contractor shall initiate litigation within twelve months after the cause of action accrues as prescribed in Section 12-821 of the Arizona Revised Statutes.

(D) Mediation:

If the Contractor is not satisfied with the decision of the Engineer, and prior to filing for arbitration or litigation, the Contractor may request a non-binding mediation by filing a request for mediation in writing with the Engineer. The Engineer will then arrange for a mutually agreeable mediator. Such request for mediation shall be made within 30 calendar days from actual receipt of the Engineer's decision as provided for in this section.

In connection with the mediation, each party shall bear its own costs, and any fees and expenses assessed by the mediator shall be borne equally by the parties.

(E) Arbitration of Claims and Disputes:

- (1) If the Contractor elects to invoke his/her right to arbitration, the Contractor shall file a Demand for Arbitration in writing with the American Arbitration Association, United States Arbitration and Mediation of Arizona, or any equivalent arbitration service, and serve a copy thereof upon the Engineer. Such Demand for Arbitration shall be made by claimant within 30 calendar days measured from actual receipt of the Engineer's decision unless a mediation process is already underway, in which case the Demand for Arbitration shall be made within 30 days of the termination of the mediation process. The scope of the arbitration proceeding shall be restricted and limited to the matters presented to the Engineer upon which the decision or determination was made and shall include no other matters. All arbitration of claims shall be conducted in Phoenix, Arizona in accordance with the rules of the arbitration service hearing the dispute.
- (2) The decision or award of the arbitrator shall be supported by substantial evidence and, in writing, contain the basis for the decision or award and findings of fact. The decision or award by the arbitrator when made shall be final and non-appealable except as provided in Section 12-1512, Arizona Revised Statutes. Both the Contractor and the Engineer shall be bound by the Arbitration Award for all purposes and judgment may be entered upon it in accordance with applicable law in the Superior Court of Arizona in and for the County of Maricopa.
- (3) For the purposes of this section, a claim for adjustment in compensation shall mean an aggregate of operative facts that give rise to the rights that the Contractor seeks to enforce. That is to say, a claim under this section is defined as the event, transaction or set of facts that give rise to a claim for compensation, costs or expenses or damages which do not exceed \$200,000.00 in amount.

In making a determination whether the amount in controversy is \$200,000.00 or less, the parties shall not consider, quantify or take into account any requested extensions of contract time, or the release or remission of liquidated damages previously assessed.

- (4) Any contractor having a claim, adjustment or dispute for an amount in excess of \$200,000.00 may waive or abandon the dollar amount of any such claim in excess of \$200,000.00 so as to bring the claim, adjustment or dispute within the scope and coverage of this section, provided that the amount allowed to any such contractor by the arbitration award shall not exceed \$200,000.00. Various damages claimed by the Contractor for a single claim may not be divided into separate proceedings to create claims within the \$200,000.00 limit.
- (5) The claim shall be submitted to a single arbitrator who shall be selected by the parties from a list of arbitrators furnished by the arbitration service. Each party shall alternately strike names from the list until only one name remains. The person whose name thus remains on the list of arbitrators is their first choice but if that person is not available to serve, the two persons whose names were last stricken are acceptable, with the one whose name was last stricken being the first alternate.
- (6) Unless agreed to otherwise, the parties shall select the arbitrator within ten calendar days after each has received a copy of the list of arbitrators.
- (7) Each party to the arbitration shall bear its own costs and any other cost and fees assessed shall be divided equally between the parties to the arbitration.

CONTROL OF MATERIAL:

(A) Source of Supply and Quality Requirements:

Whenever water is required on a project, as part of either a process or a product, it shall be free of contaminants which, in the judgment of the Engineer, constitute a health hazard to those individuals employed on the project and to the general public.

Untreated effluent shall not be utilized in any aspect of the work.

(B) Certificates:

1. General:

The Contractor shall submit to the Engineer an original or copy of either a Certificate of Compliance or a Certificate of Analysis, as required, prior to the use of any materials or manufactured assemblies for which these specifications or the special provisions require that such a certificate be furnished.

The Engineer may permit the use of certain materials or manufactured assemblies prior to, or without, sampling and testing if accompanied by a Certificate of Compliance or Certificate of Analysis, as herein specified. Materials or manufactured assemblies for which a certificate is furnished may be sampled and tested at any time, and, if found not in conformity with the requirements of the plans and the specifications, will be subject to rejection, whether in place or not.

Certificates shall comply with the requirements specified herein.

2. Certificate of Compliance:

A Certificate of Compliance shall be submitted on the manufacturer's or suppliers' official letterhead, and contain the following information:

- (1) The name, address and phone number of the manufacturer or supplier of the material.
- (2) A description of the material supplied.
- (3) Quantity of material represented by the certificate.
- (4) Means of material identification, such as label, lot number, or marking.
- (5) Statement that the material complies in all respects with the requirements of the cited specifications. Certificates shall state compliance to the specific cited specification, such as AASHTO M-194, ASTM A-588; or specific table or section of the MAG Uniform Standard Specifications, City of Phoenix Supplement to MAG, or Special Provisions. Certificates may cite all, if applicable.
- (6) A statement that the individual identified in item seven below has the legal authority to bind the manufacturer or the supplier of the material.
- (7) The name, title, and signature the responsible individual. The date of the signature shall also be given.

Each of the first six items specified above shall be completed prior to the signing as defined in item seven. No certificate will be accepted that has been altered, added to, or changed in any way after the authorized signature has been affixed to the original certificate. However, notations of a clarifying nature, such as project number, contractor, or quantity shipped are acceptable, provided the basic requirements of the certificate are not affected.

A copy or facsimile reproduction (FAX) will be acceptable; however, the original certificate shall be made available upon request.

3. Certificate of Analysis:

A Certificate of Analysis shall include all the information required in a Certificate of Compliance and, in addition, shall include the results of all tests required by the specifications.

(C) Domestic Materials:

Buy America

Steel and iron materials and products used on all projects shall comply with the current "Buy America" requirements of 23 CFR 635.410.

All manufacturing processes to produce all steel and iron products used on this project shall occur in the United States. Raw materials used in manufacturing the steel and iron products may be foreign or domestic. Steel or iron not meeting these requirements may be used in products on this project provided that the invoiced cost to the Contractor for such steel products incorporated into the work does not exceed either one-tenth of one percent of the total (final) contract cost or \$2,500, whichever is greater.

Any process which involves the application of a coating to iron or steel shall occur in the United States. These processes include epoxy coating, galvanizing, painting, or any other coating which protects or enhances the value of covered material.

The requirements specified herein shall only apply to steel and iron products permanently incorporated into the project. "Buy America" provisions do not apply to temporary steel items, such as sheet piling, temporary bridges, steel scaffolding and falsework, or to materials which remain in place at the contractor's convenience.

Certificates of Compliance, conforming to the requirements of these Specifications, will accompany each shipment of material that includes steel or iron products and will be submitted to the Engineer prior to its use. The Certificates of Compliance must state that the steel or iron products utilized on the project meets the requirements specified herein and shall also certify that all manufacturing processes to produce steel or iron products, and any application of a coating to iron or steel, occurred in the United States.

Convict-produced materials may not be used unless the materials were produced prior to July 1, 1991 at a prison facility specifically producing convict-made materials for Federal-aid construction projects.

(D) Procurement of Recovered Materials:

Contractor and subcontractors agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 C.F.R. Part 247. In the performance of this Contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 C.F.R. Part 247 whenever:

1. The Contract requires procurement of \$10,000 or more of a designated item during the fiscal year or,
2. The Contractor has procured \$10,000 or more of a designated item using federal funding during the previous fiscal year.

Contractor and Subcontractors will be responsible for reviewing EPA's website, including the Comprehensive Procurement Guidelines for Construction Products, for the most updated information under 40 C.F.R Part 247. Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the Contractor can demonstrate the item is:

1. Not reasonably available within a timeframe providing for compliance with the Contract performance schedule;
2. Fails to meet reasonable contract performance requirements; or
3. Is only available at an unreasonable price.

LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC:

(A) Sanitary, Health, and Safety Provisions:

Occupational Safety and Health Standards shall apply at all times. The Contractor shall have, in accordance with OSHA requirements, Material Safety Data Sheets (MSDS) available for all applicable materials stored or utilized on the project. Should the Contractor fail to follow OSHA regulations, the Engineer may suspend the work by written notice until compliance has been achieved. Any such failure to comply with OSHA regulations shall constitute waiver of any right to claim for such suspended work. If regulations are in conflict, the more strict regulation will apply.

(B) Public Convenience and Safety:

The Contractor shall abide by all OSHA 29 CFR Part 1926 and 29 CFR Part 1910 Regulations, as well as all applicable standards of the Environmental Protection Agency (EPA), the Arizona Department of Environmental Quality (ADEQ), and the Mine Safety and Health Administration (MSHA). The Contractor shall maintain a copy of the specified OSHA Standards on the construction site at all times.

The Contractor shall submit a Safety Plan at the preconstruction conference. The Safety Plan shall specify the procedures the Contractor will implement to satisfy OSHA and any state occupational safety guidelines related to the worker as well as the public in the construction of excavations, structures and confined air spaces along with all other activities involved in the project. The Engineer will review the Safety Plan within 10 working days and identify any additional elements of the project to be included. The Contractor shall then modify the Safety Plan, if necessary, for re- submittal to the Engineer within 5 working days. The Contractor shall not commence work until the Safety Plan has been approved, unless authorized by the Engineer.

The safety plan shall include a list of emergency procedures, phone numbers, and methods of communication for medical facilities, Police, Fire Department, and other emergency services which may become necessary. The Contractor shall be responsible for providing First Aid treatment and medical supplies on the project site, in accordance with OSHA 29 CFR Part 1910, and for producing and maintaining records of any injury-related incidents. The Safety Plan shall include the requirement that all workers must wear OSHA approved hard hats, reflective safety vests or other approved high visibility warning garments, work shoes, and, when appropriate, safety glasses while in construction areas. The Engineer and Project Superintendent shall each ensure that their visitors comply with the above requirements as appropriate.

The Contractor shall designate a competent person as Safety Supervisor to be responsible for implementation of the Safety Plan throughout the contract period. The competent person shall be capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees, and have authority to take prompt corrective measures to eliminate them. The Safety Supervisor shall also conduct safety meetings, oversee and maintain safe job-site conditions, and ensure that emergency procedures, phone numbers, and all applicable OSHA notification posters are conspicuously placed in all work areas.

The Safety Supervisor shall maintain records demonstrating that all workers have sufficient experience to operate their equipment, and have been instructed in the proper operation of the equipment. The Safety Supervisor shall furnish evidence that crane operators have been instructed in accordance with the requirements of OSHA 29 CFR Part 1926.550 Subpart N, and 1926.955 Subpart V.

(C) Damage by Storm, Flood, or Earthquake:

Damage by Storm, Flood, or Earthquake: Attention is directed to MAG Section 107.10, "Contractor's Responsibility for Work". In the event damage to the work is caused by a storm, flood, or earthquake which constitutes an "Occurrence," as hereinafter defined, the provisions of this Section shall be applicable and the Contractor may apply in writing to the Engineer for the City to pay or participate in the cost of repairing damage to the work from such cause or, in lieu thereof, and at the sole discretion of the Department/City, terminate the contract and relieve the Contractor of further obligation to perform the work, subject to the following:

1. Occurrence:

"Occurrence" shall include tornadoes; earthquakes in excess of a magnitude of 3.5 on the Richter Scale; and storms and floods for which the Governor has proclaimed a state of emergency, when the damaged work is located within the territorial limits to which such proclamation is applicable; or which were a catastrophic, unusual, sudden, and unforeseeable manifestation of the forces of nature, the effect of which could not have been prevented or minimized by reasonable human foresight and effort.

2. Application by Contractor:

The Contractor shall immediately begin performing emergency work necessary to provide for the safety and passage of public traffic, and such other emergency work necessary to mitigate damages to the facilities. The Contractor's written request for the City to pay or to participate in the cost of rebuilding, repairing, restoring or otherwise remedying the damage to the work caused by the occurrence shall be submitted to the Engineer. The repair work may begin prior to authorization by the Engineer, but the Contractor shall keep accurate costs of all such work performed.

3. Repair Work:

Repair of damaged work under the provisions of this subsection shall be pursuant to a supplemental agreement issued hereunder and specifying the repair work to be performed on the damaged facility. Such repair work shall consist of restoring the in-place construction (for the purposes of this subsection erected falsework and formwork shall be considered in-place construction) to the same state of completion to which such work had advanced prior to the Occurrence. Emergency work which the Engineer determines would have been part of the repair work if it had not previously been performed, will be considered to be part of said repair work. The City reserves the right to make changes in the plans and specifications applicable to the portions of the work to be repaired, and if such changes will increase the cost of repairing the damage over the Engineer's estimate of the cost of repair without the changes, the Contractor will be paid for such increased costs in accordance with Subsection 4 below.

Nothing in this section shall be construed to relieve the Contractor of full responsibility for the risk or injury, loss or damage to materials not yet incorporated in the work and to materials, tools, and equipment (except erected falsework and formwork) used to perform the work, nor to relieve the Contractor of his liability. The City will be responsible for any portion of the work accepted by the Engineer in accordance with MAG Section 105.15, and the Supplementary Conditions section, "MAG SUBSECTION 105.15(B) FINAL ACCEPTANCE" contained herein.

4. Determination of Costs:

Unless otherwise agreed between the Engineer and the Contractor, the cost of the work performed pursuant to this Section will be determined in accordance with an approved contract change order. The cost of emergency work, which the Engineer determines would have been part of the repair work if it had not previously been performed will be determined in the same manner as the authorized repair work. The cost of superintendence and other documented direct project costs associated with recovering the site, including idled equipment, remobilization costs and project office overhead shall be included in the cost of emergency and repair work. No payment shall be made for home office overhead.

5. Payment for Repair Work:

The City will pay the cost of the repair work as determined in Subsection 4.

6. Termination of Contract:

If the City elects to terminate the contract, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of MAG Section 108.11- Termination of Contract.

PROVIDE ON-THE-JOB TRAINING:

The Contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification

involved.

The number of trainees to be trained under this project shall be at least 0, and the required number of training hours shall be 0; however, the Contractor shall make every possible effort to provide additional trainees with training and shall see that all trainees are afforded every opportunity to participate in as much training as is practically possible to provide. Due to turnover and attrition of trainees in any single trainee slot, it is expected that continuous trainee replacements may be necessary during the contract work period.

In the event that a Contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The Contractor shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the Contractor shall submit to the City for approval, the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. The Contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeyman status is a primary objective of this Training Special Provision. Accordingly, the Contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The Contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The Contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records shall document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by the City and the Federal Highway Administration. The City and the Federal Highway Administration will approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, Apprenticeship programs registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Bureau of Apprenticeship and Training will also be considered acceptable provided they are being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Specifically, union apprenticeship programs, Associated Builders and Contractor's apprenticeship program and Associated General Contractor's Arizona Training program may be used. Additionally, in-house training programs are approved on a case-by-case basis. Approval or acceptance of a training program shall be obtained from the City prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the Federal Highway Administration. Some off site training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the Contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the Engineer, reimbursement will be made for training

persons in excess of the number specified herein. This reimbursement will be made even though the Contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for off-site training indicated above may only be made to the Contractor where he contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the off site training period.

No payment will be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. However, when such training opportunities are suspended or interrupted under the contract which the trainee was designated, the Contractor may continue training under other contracts regardless of their funding, except that no reimbursement for such training shall be made on non-federal aid contracts, under this training special provision. It is not required that all trainees be on board for the entire length of the contract. A Contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent of the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program will apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The Contractor shall furnish the trainee a copy of the program he will follow in providing the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The Contractor shall provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

The Contractor shall submit a weekly training report to the Engineer. The report shall be prepared on forms obtained from the City of Phoenix Equal Opportunity Department, Business Relations Division, 200 W. Washington Street, 15th Floor, Phoenix, AZ 85003.

At the preconstruction conference, the Contractor shall submit a schedule which will indicate each trainee's name, social security number, sex, race/ethnicity, the program in which the trainee is enrolled, the approximate number of hours each trainee will be trained in each phase of the work, the crafts to which the trainees belong and the estimated period of time that they will be employed as trainees. A supplemental schedule shall be submitted to the Engineer when a revision in the original schedule is necessary. At the time each trainee is scheduled to begin work, the Contractor shall submit to the Engineer each trainee's name, social security number, sex, and race/ethnicity. The Contractor must also submit proof that the trainee is enrolled in an approved training program.

At the conclusion of the project or at the end of each calendar year for multi-year projects, the Contractor must submit to the City of Phoenix Equal Opportunity Department (via the Engineer), the same information described hereinbefore for each trainee that worked on the project. Additionally, the Contractor must indicate if the trainee graduated from the program, was terminated due to cause, or was transferred to another project to continue his/her training.

If, at the preconstruction conference, the Contractor does not provide a schedule containing the specified information, the Engineer will notify the Contractor of the infraction. Failure to provide the schedule within 15 calendar days from the date of notification shall be considered as willful non-compliance. The Engineer will cause to be withheld from the Contractor's monthly payments additional retainage in the amounts specified below. The amount withheld from the monthly payment shall be held until an acceptable schedule or supplemental schedule has been submitted.

The Engineer will monitor the use of trainees based on the Contractor's schedule, supplemental schedules, and weekly training report. If the use of trainees is not in conformance with the schedule or supplemental information, the Engineer will cause to be

withheld from the Contractor's monthly payments additional retainage in the amounts specified below. Conformance with the schedule will be considered acceptable when the cumulative number of trainee hours earned to date under the bid item, PROVIDE ON THE JOB TRAINING is at least 90 percent of that shown on the schedule, for the work performed to date.

ADDITIONAL RETAINAGE

First and Second monthly payments following infraction: \$1,000.00 each month

Third monthly payment and thereafter: \$5,000.00 each month

The amount withheld from the monthly payment shall be held until an acceptable schedule or supplemental schedule has been submitted and until conformance with the schedule has been determined.

If, at the completion of the contract, the City is holding additional retainage in accordance with this specification, the retainage will become the property of the City, not as penalty but as liquidated damages.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION:

The Contractor shall complete the "Information Furnished Pursuant to the NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)" form (copy included in this Federal Requirement section of these Special Provisions), and submit it to the Engineer at the pre-construction meeting. This form will be filed with the U.S. Department of Labor by the City of Phoenix.

NOTICE OF REQUIREMENT FOR CARGO ACT OF 1954:

The Federal Highway Administration (FHWA) in partnership with the Federal Maritime Administration has mandated the implementation of 46 CFR 381 making the requirements of the Cargo Preference Act (CPA) applicable to the Federal Aid Highway Program.

The requirements apply to items transported by ocean vessel.

The requirements of 46 CFR 381 apply to materials or equipment acquired for a specific federal-aid highway project. In general, the requirements are not applicable to goods or materials that come from inventories independent of FHWA-funded contracts.

Information related to the CPA is presented in "Cargo Preference Requirements – Questions and Answers" available from the FHWA at <https://www.fhwa.dot.gov/construction/cgit/cargo/ga.cfm>.

The Contractor shall comply with the requirements of the Cargo Preference Act 46 CFR 381.7(a)-(b). By executing a construction contract for this project, the Contractor agrees:

1. To utilize 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 this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
2. To furnish within 20 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 paragraph above to both the Engineer and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

**INFORMATION FURNISHED PURSUANT TO THE NOTICE OF
REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE
EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246)
Set Forth in Paragraph 3 in Federal Register,
Vol. 43, No. 68**

CITY OF PHOENIX PROJECT NO:
FEDERAL AID NO.:
ADOT TRACS NO.:
PROJECT DESCRIPTION:
LOCATION:

Contractor Identification Number (as used on U.S. Treasury Department Form 941): Name _____

and Address of Contractor: _____

Telephone Number: _____

Amount of Contract: _____

Estimated Starting Date: _____

Estimated Completion Date: _____

Geographical Area: **State of Arizona**

(County)

(City)

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS
EXECUTIVE ORDER 11246, July 1, 1978 (Revised November 3, 1980)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer Identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetable.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications. Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken

with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason hereof, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc; by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written to minority, female and

community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligation under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors; adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation

which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form;

however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246)**

JULY 1, 1978 (Revised November 3, 1980)

(Revised April 15, 1981)

1. The bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

	<u>Minority</u>	<u>Female</u>
Tucson and balance of Pima County	24.1	6.9
Cochise, Graham, Greenlee and Santa Cruz Counties	27.0	6.9
Phoenix and balance of Maricopa County	15.8	6.9
Apache, Coconino, Gila, Mohave, Navajo, Pinal, Yavapai and Yuma Counties	19.6	6.9

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in all areas where he has Federal or federally assisted work.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its effort to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

FEDERAL-AID PROPOSAL NOTICES

NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS

1. CERTIFICATION OF NONSEGREGATED FACILITIES

- a. A certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).
- b. Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employee facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.
- c. Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or materials supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

2. NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

- a. A Certification of Nonsegregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clauses.

- b. Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.
- c. Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and materials suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

3. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

By signing this bid, the bidder will be deemed to have stipulated as follows:

- a. That any facility to be utilized in the performance of this contract, unless such contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1957 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR, Part 15), is not listed on the U.S. Environmental Protection 40 CFR 15.20.
- b. That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

BID PROPOSAL
CITY OF PHOENIX, ARIZONA
OFFICE OF THE CITY ENGINEER
PROJECT TITLE: FY2022 CMAQ ALLEY DUSTPROOFING
PROJECT NOS.: ST87400405
FEDERAL AID PROJECT NO: PHX-0(372)D
ADOT TRACS NO: T039701C
BOND ISSUE OR BUDGET PROJECT

PROPOSAL to the City Engineer of the City of Phoenix.

In compliance with the Advertisement for Bids, by the City Engineer, the undersigned bidder:

(Print or Type Contractor Name and Vendor Number)

Having examined the contract documents, site of work and being familiar with the conditions to be met, hereby submits the following proposal for furnishing the material, equipment, labor and everything necessary for the completion of the work listed and agrees to execute the contract documents and furnish the required bonds and certificates of insurance for the completion of said work, at the locations and for the prices set forth on the inside pages of this form.

Understands that construction of this project shall be in accordance with all applicable Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Uniform Standard Details, latest edition, and the City of Phoenix Supplements to the MAG Uniform Standard Specifications and Details, latest edition, except as otherwise required by the project plans and specifications.

No proposal may be withdrawn for a period of 50 days after opening without consent of the Contracting Agency through the body or agent duly authorized to accept or reject the proposal except in the case of federally assisted projects.

Understands that his proposal shall be submitted with a proposal guarantee of cash, certified check, cashier's check or surety bond for an amount not less than ten (10) percent of the amount bid, as referenced in the Call for Bids.

Agrees that upon receipt of Notice of Award, from the City of Phoenix, he will execute the contract documents within 10 calendar days.

Work shall be completed within 360 calendar days, beginning with the day following the starting date specified in the Notice to Proceed. The time allowed for completion of the work includes lead time for obtaining the necessary materials and/or equipment and approvals.

The bidder shall acknowledge all addenda in writing. By writing the addendum number(s) below, the bidder agrees that this proposal is computed with consideration of the specification book(s) plus any addenda.

<u>ADDENDUM NO.</u>	<u>DATE</u>	<u>ADDENDUM NO.</u>	<u>DATE</u>
_____	_____	_____	_____
_____	_____	_____	_____

City of Phoenix
BID PROPOSAL

2022 CMAQ Alley Dustproofing
Project No: ST87400405
Federal Aid No: PHX-0(372)D
ADOT TRACS No: T039701C

Item No.	Description	Unit	Quantity	Unit Price	Total
1 E699200	Allowance for Stormwater Pollution Prevention Best Management Practices (BMP's)	Job	1.00	\$10,000.00	\$10,000.00
2 M1042005	Allowance for Extra Work	Job	1.00	\$60,000.00	\$60,000.00
3 M2010030	Clearing & Grubbing (MAG 201) and Subgrade Preparation (MAG 301)	Sq. Yd.	193,224.00		
4 M2050100	Replace Unsuitable Subgrade Materials (Contingent Item)	Cu. Yd.	522.00		
5 M3010101	Removal of Degraded Asphalt Millings (Contingent Item)	Ton	5,239.00		
6 M3300503	Liquid Asphalt (MC-250)	Ton	474.00		
7 M3300502	Pre-Coated Chips	Ton	5,313.00		
8 M3304100	Power Broom (Contingent Item)	Hour	30.00		
9 M3450020	Adjust Existing Manhole Frame and Cover, MAG Std Detail 422 (Contingent Item)	Each	125.00		
10 M4012000	Traffic Control Devices	Lump Sum	1.00		

City of Phoenix
BID PROPOSAL

2022 CMAQ Alley Dustproofing

Project No: ST87400405

Federal Aid No: PHX-0(372)D

ADOT TRACS No: T039701C

Item No.	Description	Unit	Quantity	Unit Price	Total
11 M4013000	Allowance for Uniformed, Off-duty Law Enforcement Officer	Allow	1.00	\$60,000.00	\$60,000.00
12 M4307002	Weed Control Pre-emerge	Sq. Yd.	193,224.00		
13 M4307004	Weed Control Post-emerge	Sq. Yd.	193,224.00		

Project No.: ST87400405 -

2022 CMAQ Alley Dustproofing TOTAL FOR BID ITEMS 1 THRU 13 \$ _____

_____ and _____/100 Dollars
 Total Written in Words

Prepared By:

 Signature

 Name

 Position/Title

 Firm Name

PROPOSAL SUBMITTAL

**PROJECT TITLE: FY2022 CMAQ ALLEY DUSTPROOFING
PROJECT NOS.: ST87400405
FEDERAL AID PROJECT NO: PHX-0(372)D
ADOT TRACS NO: T039701C**

THIS PROPOSAL IS SUBMITTED BY _____

a corporation organized under the laws of the State of _____

a partnership consisting of _____

a joint venture consisting of _____

or individual trading as _____

of the City of _____

FIRM _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

PHONE _____ VENDOR NO. _____

BY _____
Officer and Title (signature)

Officer and Title (print or type)

Date

WITNESS: If Contractor is an individual
(signature)

ATTEST: If Contractor is Corporation or Partnership
(signature and title)

SURETY BOND

**CITY OF PHOENIX PROJECT NO.: ST87400405
FEDERAL AID PROJECT NO: PHX-0(372)D
ADOT TRACS NO: T039701C**

That we, _____, as Principal, (hereinafter called the Principal) and the _____, a corporation duly organized under the laws of the State of _____, as Surety, (hereinafter called the Surety) are held and firmly bound unto the City of Phoenix as Obligee, in the sum of ten (10) percent of the total amount of the bid of Principal, submitted by him to the City of Phoenix for the work described below, for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents and in conformance with A.R.S. #34-201.

WHEREAS, the said Principal is herewith submitting its proposal for **FY2022 CMAQ ALLEY DUSTPROOFING**

NOW, THEREFORE, if the City of Phoenix shall accept the proposal of the Principal and the Principal shall enter into a contract with the City of Phoenix in accordance with the terms of such proposal and give such Bonds and Certificates of Insurance as specified in the Standard Specifications with good and sufficient Surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter into such contract and give such Bonds and Certificates of Insurance, if the Principal shall pay to the City of Phoenix the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by the proposal, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this _____ day of _____ A.D., 2024

Principal

Title

Mailing Address

Surety

WITNESS:

A.M. BEST RATING:

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
GOAL ASSURANCE**

The undersigned, fully cognizant of the requirements and of the goal established, hereby certifies that in the preparation of this bid for federal aid project:

ADOT TRACS No: _____

Agency Project No: _____

Project Name: _____

(CHECK ONE)

The bidder has met the established DBE goal and arrangements with certified DBEs have been made prior to the submission of the bid.

OR

The bidder has been unable to meet the established DBE goal prior to the submission of the bid and has made good faith efforts to do so.

THIS CERTIFICATE MAY NOT BE REVISED OR CORRECTED AFTER SUBMISSION OF THE BID.

If the bidder certifies that it has met the goal, the bidder cannot change its decision after submission of the bid and submit documentation of a good faith effort. If the bidder certifies that it has been unable to meet the goal and has made a good faith effort, the bidder cannot change its position after the submission of the bid and claim to have met or be able to meet the established goal.

In accordance with the DBE Special Provisions, the bidder shall specify its DBE participation on the "DBE Intended Participation Affidavit", or provide documentation of its good faith efforts, by 4:00 p.m. on the fifth calendar day following the bid opening. The bidder shall obtain the required affidavit from the _____

Insert Agency Name

Print Name of Firm

Print Name of Authorized Officer of Firm

Signature of Authorized Officer of Firm

Title

Date

**CONSTRUCTION
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit**

INSTRUCTIONS

1. Do not submit *Instructions* page.
2. Contractors are encouraged to fill out the form based on information from prior arrangements made with the DBE Contractor, Subcontractor, Lower Tier Subcontractor, Supplier or Broker
3. The form must be signed by an authorized officer or principal of the DBE firm and submitted to the contractor.
4. The form must be submitted **by 4:00 p.m.** on or before the **fifth calendar day** after the bids are opened.
5. The DBE firm must be certified and licensed within the work category to be performed.
6. The form must be filled out **entirely**. Leave no blank spaces, use N/A or enter "0" if section does not apply.
7. NAICS Code: Enter up to three NAICS codes applicable to the description/scope of work (attach copy of quote(s) as necessary).
8. For additional description/scope of work fill out additional form(s) as necessary (attach copy of quote(s) as necessary).
9. A separate form must be submitted for each proposed DBE firm.
10. All partial items must be noted. If not, the DBE will be considered to be responsible for the entire item.
11. Completed form(s) must be scanned and emailed to _____

Definitions:

1. Unit Price or Hourly Rate Bid or Lump Sum Bid
 - *NAICS Code:* Identify the North American Industry Classification System code that the firm is certified as a DBE to perform (Refer to AZUTRACS at <https://utracs.azdot.gov/> & NAICS at <https://www.naics.com/>)
 - *Bid Item No.:* Identify the work item number that correlates to the work being performed
 - *Description / Scope of Work:* Identify work to be performed
 - *Total:* Identify the total dollar value for the work to be performed - ***Note*** - *The Total for any Bid Item on Affidavits cannot exceed the Prime Contractors Bid Tab Total for the same Bid Item*
2. Trucking
 - Identify total number of trucks owned by DBE and the total dollar value of work
 - Identify total number of DBE trucks used on this project and the total dollar value of work
 - Identify total number of DBE leased trucks used on this project and the total dollar value of work
 - Identify total number of non-DBE leased trucks with DBE drivers used on this project and the total dollar value of work
 - Identify total number of non-DBE leased trucks without DBE drivers used on this project and the total dollar value of work
3. Brokerage
 - Identify total dollar value of brokered work
 - Identify the fees or commission value that pertain to the total brokerage amount
4. Identify the total dollar amount to be subcontracted to a non-DBE firm
5. Identify the total dollar amount to be subcontracted to a DBE firm



CONSTRUCTION
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit – Summary

INSTRUCTIONS

1. Do not submit *Instruction* page.
2. Identify first-tier DBE firms and any lower-tier DBE firms if used by non-DBE subcontractors for total DBE utilization.
3. When completing the calculations table, enter the Contract Bid Amount (F) first so pop-up warning message does not appear.
4. Submit corresponding *DBE Intended Participation Affidavit* form for each DBE firm identified on this form.
5. Completed documentation can be scanned and emailed to _____

Definitions:

AZ UTRACS Registration No.: can be found conducting a search on the AZ UTRACS website: <https://utracs.azdot.gov/Search>.

DBE Liaison Name: the designated employee who shall be responsible for the administration of the prime's DBE program *Contract Bid*

Amount: Total dollar amount bidder proposes at time of bid (Total Bid Amount)

Prime Name: name of contractor

TRACS No.: number identifier for contracts, projects, solicitations, and purchase orders

A – DBE firm's name

B – Services provided by the DBE firm – must coincide with the NAICS Code the DBE is certified in

C – This amount should be the same as the "Minimum Contract Amount" on form 105C for each DBE firm listed

D – Adjustments

- Any deductions from DBE's total contract amount due to subletting of work to non-DBE firms
- DBE credit less than 100%
 - Suppliers receive 60% credit
 - Brokers receive credit for broker fees only (not full contract or P.O. value)
- Enter "0" if there are no adjustments

E – Total contract amount less any adjustments (*C* minus *D*)

F – Enter total bid amount on project

**CERTIFICATION WITH REGARD TO THE PERFORMANCE OF
PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE
EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS
APRIL 1969**

The bidder _____, proposed subcontractor _____, hereby certifies that he has _____, has not _____, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that he has _____, has not _____, filed with the Joint Reporting committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

(Company)

By: _____

(Title)

Date: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7b (1),) and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5 (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Information concerning Standard Form 100 (EEO-1) is available from:

Joint Reporting Committee P.O.
Box 19100
Washington, D.C. 20036-9100

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

R7/03

**CITY OF PHOENIX
LIST OF MAJOR SUBCONTRACTORS AND SUPPLIERS**

PROJECT NO.: ST87400405

PROJECT TITLE: FY2022 CMAQ ALLEY DUSTPROOFING

DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER TRADE/SUPPLIER AREAS)	SELF-PERFORMED BY PRIME CONTRACTOR	SUBCONTRACTOR/SUPPLIER COMPANY NAME (IF NOT SELF-PERFORMED)	CONTACT PERSON	PHONE NUMBER	DOLLAR VALUE OF WORK OR MATERIALS IN BID
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				

I hereby certify by signing below that the above listed companies will be utilized to perform work on this project for an **equal to or greater than 5% of the base bid**. These companies will not be removed or replaced without prior written approval by the City of Phoenix Project Manager. The City requires that ALL vendors providing work equal to or greater than 5% of the base bid are listed or you will be disqualified. If you are self-performing work, you must still list any suppliers for materials or list any subcontractors with whom you will directly contract.

COMPANY NAME _____ SIGNATURE _____

NAME & TITLE _____ PHONE NUMBER _____ DATE _____

EMAIL ADDRESS _____

CITY OF PHOENIX
LIST OF ALL SUBCONTRACTORS AND SUPPLIERS

PROJECT NO.: ST87400405 PROJECT TITLE: FY2022 CMAQ ALLEY DUSTPROOFING

DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER TRADE/SUPPLIER AREAS)	SELF-PERFORMED BY PRIME CONTRACTOR	SUBCONTRACTOR/SUPPLIER COMPANY NAME (IF NOT SELF-PERFORMED)	CONTACT PERSON	PHONE NUMBER	DOLLAR VALUE OF WORK OR MATERIALS IN BID
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				
	<input type="checkbox"/> YES <input type="checkbox"/> NO				

I hereby certify by signing below that the above listed companies will be utilized to perform work on this project. These companies will not be removed or replaced on the project without prior written approval by the City of Phoenix Project Manager. The City requires that ALL vendors providing work are listed or you will be disqualified. If you are self-performing work, you must still list any suppliers for materials or list any subcontractors with whom you will directly contract.

COMPANY NAME _____ SIGNATURE _____

NAME & TITLE _____ PHONE NUMBER _____ DATE _____

EMAIL ADDRESS _____

BIDDER'S DISCLOSURE STATEMENT

Authorized Contact for this Disclosure Statement

Name: _____

Title: _____

E-mail: _____

Phone number: _____

List any EIN, DBA, trade name, or other identity used in the last five years, the state or country where filed, and the status (active or inactive): (if applicable): _____

Business Characteristics

Business entity type – Please check appropriate box and provide additional information:

- | | | | |
|--------------------------|-------------------------------|------------------------------|-------|
| <input type="checkbox"/> | Corporation | Date of incorporation: | _____ |
| <input type="checkbox"/> | Limited Liability Company | Date organized: | _____ |
| <input type="checkbox"/> | Limited Liability Partnership | Date of registration: | _____ |
| <input type="checkbox"/> | Limited Partnership | Date established: | _____ |
| <input type="checkbox"/> | General Partnership | Date established: | _____ |
| <input type="checkbox"/> | Sole Proprietor | How many years in business?: | _____ |
| <input type="checkbox"/> | Other (explain) | Date established: | _____ |

Was the business entity formed in the State of Arizona? Yes _____ No _____

If no, indicate jurisdiction where Business Entity was formed: _____

Business License Number and Classification: _____

Business Transaction Privilege License Number: _____

Special Use or other zoning permits required for Bidder's operation and performance of the services under this Agreement:

Is the Business Entity currently registered to do business in Arizona with the Arizona Corporation Commission? Yes_____ No_____ Not required _____ (if sole proprietor or general partnership)

Does the Business Entity have a City of Phoenix business privilege license? Yes_____ No_____ If "no" explain and provide detail such as "not required" or "application in progress" or other reason.

Is the Business Entity publicly traded? Yes_____ No_____

Is the responding Business Entity a Joint Venture? Note: If the Submitting Business entity is a Joint Venture, also submit a questionnaire for each Business Entity comprising the Joint Venture. Yes_____ No_____

Is the Business Entity's Principal Place of Business/Executive office in Phoenix? If "no" does the Business Entity maintain an office in Phoenix? Yes_____ No_____

Provide the address and phone number for the Phoenix office. _____

Is the business certified by Phoenix as a Small Business Enterprise? Yes_____ No_____

Identify Business Entity Officials and principal Owners:

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Name(s) _____ Title _____ Percentage ownership ____%(Enter 0% if not applicable).

Affiliates and Joint Venture Relationships

Does the Business entity have any Affiliates? Yes_____ No_____ Attach additional pages if necessary.

Affiliate name: _____

Affiliate EIN (if available):_____.

Affiliate's primary Business Activity:_____

Explain relationship with Affiliate and indicate percent ownership, if applicable. _____

Are there any Business Entity Officials or Principal Owners that the Business Entity has un common with this Affiliate? _____

Individual's name: _____

Position/Title with Affiliate: _____

Has the Business Entity participated in any joint Ventures within the past three years? Yes _____ No _____
(Attach additional pages if necessary)

Joint Venture Name: _____

Joint venture EIN (if applicable): _____

Identify parties to the Joint Venture: _____

Contract History

Has the Business Entity held any contracts with the city of Phoenix in the last three (3) years? Yes _____ No _____ If "yes" attach a list.

Integrity – Contract Bidding

Within the past three (3) years, has the Business Entity or any Affiliate been suspended or debarred from any government contracting process or been disqualified on any government procurement? Yes _____ No _____

Been subject to a denial or revocation of a government prequalification? Yes _____ No _____

Been denied a contract award or had a bid rejected based upon a finding of a non-responsibility by a government entity? Yes _____ No _____

Agreed to a voluntary exclusion from bidding/contracting with a government entity? Yes _____ No _____

Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? Yes _____
No _____

Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity? Yes _____
No _____

For each "Yes" answer above, provide an explanation of the issues.

Integrity – Contract Award

Within the past three (3) years has the Business Entity or any Affiliate been suspended, cancelled, or terminated for cause on any government contract? Yes _____ No _____

Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract? Yes _____
No _____

For each "yes" answer, provide an explanation. (Attach explanation on a separate sheet of paper).

Certifications/Licenses

Within the past three (3) years, has the Business Entity or Affiliate had a revocation, suspension, or disbarment of any business or professional permit and/or license? Yes_____ No_____

If “yes” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issues.

Legal Proceedings

Within the past three (3) years, has the Business Entity of any Affiliate:

Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation? Yes_____ No_____

Been the subject of an indictment, grant of immunity, judgment or conviction, (including entering into a plea bargain for conduct constituting a crime)? Yes_____ No_____

Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful? Yes_____ No_____

Had a government entity find a willful prevailing wage or supplemental payment violation? Yes_____ No_____

Been involved in litigation as either a plaintiff or a defendant involving a copyright or patent infringement violation or an anti-trust violation? Yes_____ No_____

Other than previously disclosed, for the past three (3) years:

(i) Been subject to the imposition of a fine or penalty in excess of \$1000 imposed by any government as a result of the issuance of citation, summons or notice of violation, or pursuant to any administrative, regulatory, or judicial determination ; Yes_____ No_____

(ii) Been charged or convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity? Yes_____ No_____

If “yes” provide an explanation of the issue(s), the Business Entity involved, the relationship to the submitting Business Entity, relevant dates, the government entity involved, and any remedial or corrective action(s) taken and the current status of the issues.

Leadership Integrity

If the Business Entity is a joint Venture Entity, answer “N/A – Not Applicable” to questions below:

Within the past three (3) years has any individual previously identified, or any other Business Entity Leader not previously identified, or any individual having the authority to sign, execute, or approve bids, proposals, contracts or supporting documentation with the City of Phoenix been subject to:

A sanction imposed relative to any business or professional permit and/or license? Yes_____ No_____

An investigation, whether open or closed, by any government entity for a civil or criminal violation for any business related conduct? Yes_____ No_____



City of Phoenix
AFFIDAVIT OF IDENTITY

Your completion of this form is required by Arizona state law. A.R.S. §§ 1-501 and -50 only if you are a sole proprietor.

I, _____ (print full name exactly as on document), hereby affirm, upon penalty of perjury, that I presented the document marked below to the City of Phoenix, that I am lawfully present in the United States, and that I am the person stated on the document. (select one category only)

Arizona driver license issued after 1996.

Print first four numbers/letters from license:

Four empty boxes for license numbers/letters

Arizona non-operating identification license.

Print first four numbers/letters:

Four empty boxes for license numbers/letters

Birth certificate or delayed birth certificate issued in any state, territory or possession of the U.S.

Year of birth: _____; Place of birth: _____

United States Certificate of Birth Abroad.

Year of birth: _____; Place of birth: _____

United States Passport.

Print first four numbers/letters on Passport:

Four empty boxes for passport numbers/letters

Foreign Passport with United States Visa.

Print first four numbers/letters on Passport:

Four empty boxes for passport numbers/letters

Print first four numbers/letters on Visa:

Four empty boxes for visa numbers/letters

I-94 Form with a photograph.

Print first four numbers on I-94:

Four empty boxes for I-94 numbers

USCIS Employment Authorization Document (EAD).

Print first four numbers/letters on EAD:

Four empty boxes for EAD numbers/letters

or Perm. Resident Card (acceptable alternative):

Four empty boxes for Perm. Resident Card numbers/letters

Refugee Travel Document.

Date of issuance: _____; Refugee country: _____

U.S. Certificate of Naturalization.

Print first four digits of CIS Reg. No.:

Four empty boxes for CIS Reg. No. digits

U.S. Certificate of Citizenship.

Date of issuance: _____; Place of issuance: _____

Tribal Certificate of Indian Blood.

Date of issuance: _____; Name of tribe: _____

Tribal or Bureau of Indian Affairs Affidavit of Birth.

Year of birth: _____; Place of birth: _____

Signed: _____

Dated: _____

BUY AMERICA CERTIFICATE

FOR COMPLIANCE WITH TITLE 49 USC § 5323(J)(1)
(For Procurement of Steel, Iron, or Manufactured Products)
(EXCLUDES ROLLING STOCK)

PROJECT NO. ST87400405
PROJECT TITLE FY 2022 CMAQ Alley Dustproofing
Federal Aid No.: PHX-0(372)D ADOT TRACS No.: T0397 01C

(Complete form and submit with bid)

The Bidder/Proposer hereby certifies that it will comply with the requirements of Title 49 USC § 53230 (1) and the applicable regulations in 49 CFR Part 661.

Executed on _____, **2024** at _____

(Date) (City) (State)

Printed Name Signature of Authorized Official Title

BUY AMERICA CERTIFICATE FOR NON-COMPLIANCE WITH TITLE 49 use §. 5323(J)(1)

The Bidder/Proposer hereby certifies that it cannot comply with the requirements of Title 49 USC § 5323(j)(1), but it may qualify for an exception pursuant to Title 49 USC § 5323 (j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Executed on _____, **2024** at _____

(Date) (City) (State)

Printed Name Signature of Authorized Official Title

