



City of Phoenix
OFFICE OF THE CITY ENGINEER
DESIGN AND CONSTRUCTION PROCUREMENT
200 W. Washington Street, 5th Floor
Phoenix, Arizona 85003-1611

2022 SS4A RSAP PEDESTRIAN RISK NETWORK

ENGINEERING SERVICES

ST89320174

NOTIFICATION LETTER NO. 1

JUNE 21, 2024

This notification letter shall become part of the Request for Qualifications for the above referenced project.

EXHIBIT B - Attached is the Disadvantaged Business Enterprise Forms

All other terms and conditions remain unchanged.

Attachments:

A handwritten signature in blue ink that reads "Tonja A. Lepur".

Tonja A. Lepur
Contracts Specialist
CITY OF PHOENIX
DESIGN AND CONSTRUCTION PROCUREMENT

*****END OF NOTIFICATION*****



City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

DBE – Negotiated Contract Clause Race & Gender-Neutral – Professional Services

Phoenix is one of the fastest growing, multicultural cities in the country and has shown a historical commitment to business diversity. The City and its partners strive to advance the economic growth of small businesses through its Disadvantaged Business Enterprise (DBE) Program.

The City of Phoenix DBE Program is managed and administered by the City's Equal Opportunity Department, Contract Compliance Division. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance, educational services, and networking.

SECTION I. DEFINITIONS

Agency means the City of Phoenix for purposes of this Contract.

Arizona Unified Certification Program (AZUCP) means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 Code of Federal Regulations (CFR) Part 26. The official DBE database containing eligible DBE firms certified by AZUCP can be accessed at: <https://utracs.azdot.gov>. The certification system is called the Arizona Unified Transportation Registration and Certification System (AZ UTRACS).

Phoenix Contract Compliance System means the web-based certification and compliance system used to track and monitor DBE and Small Business Participation. The system can be accessed at: <https://phoenix.diversitycompliance.com>

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including construction and professional services) and the buyer to pay for them.

DBE Compliance Specialist means an Agency employee responsible for compliance with this DBE Contract Clause.

EOD means the City of Phoenix Equal Opportunity Department.

Joint Venture (JV) means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this Contract. The resources, asset, and labor of the participants must be combined in an effort to accrue profit.

Outreach Efforts means the diligent and good faith efforts demonstrated by a Submitter to solicit participation from interested and qualified DBEs and other Small Businesses. Submitter shall identify and document potential business opportunities for DBEs and other Small Businesses, describe what efforts were undertaken to solicit DBE and Small Business participation, disclose results of negotiations with DBEs and Small Businesses, and communicate and record Submitter's selection decisions relating to DBE and Small Business participants.

Disadvantaged Business Enterprise (DBE) means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by an AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

Commercially Useful Function means that a DBE is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If a DBE does not perform or exercise responsibility for at least 30% 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 DBE is presumed not to be performing a Commercially Useful Function.

Goods and Services Providers are firms that provide goods and services that represent a Commercially Useful Function as a DBE or Small Business.



City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

Manufacturer means a firm that owns, operates or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by the recipient or successful submitter.

Regular dealer/broker is a firm that owns, operates, or maintains a store, 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 released to the public in the usual course of business.

Supplier means a firm that engages in, as its principal business, the purchase and sale of material or supplies required for the performance of a contract. The firm must own, operate, and maintain a store, warehouse or other establishment where the supplies are bought, kept in stock, and regularly sold to the public in the usual course of business.

Small Business Concern (SBC) means, with respect to firms seeking to participate in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b). “Small Business” and “Small Business Concern” are used interchangeably in this DBE Contract Clause.

Small Business Enterprise (SBE) means a small business that has been determined to meet the requirements for SBE certification with the City of Phoenix and whose certification is in force at the time of the award of business by the City. A directory of currently certified SBE firms is located at <https://phoenix.diversitycompliance.com>.

Race- and Gender-Neutral (RGN) Measures means a measure or program that is, or can be used to assist all Small Businesses.

Subcontract means a contract at any tier below the prime contract, including a purchase order.

Subcontractor means an individual, partnership, JV, corporation or firm that holds a contract at any tier below the prime contract, including a vendor under a purchase order.

Submitter means an individual, partnership, JV, contractor, corporation, or firm that tenders a submittal to the Agency to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative. (Submitter is inclusive of the terms: *Bidder, Offeror, Proposer, Respondent*, etc.)

Responsive Submitter means a firm that has met the minimum program requirements as outlined in the solicitation and due at the time of submittal.

Successful Submitter means a firm that has been awarded the contract by the Agency to perform services or furnish supplies requested by a solicitation or procurement.

Responsible Submitter means a firm that has been selected to continue in the procurement process by the Agency.

SECTION II. GENERAL REQUIREMENTS

A. **Applicable Federal Regulations**

This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.

B. **DBE Participation**



City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

For this solicitation, the Agency has *not* established a race- or gender-*conscious* DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-*neutral* measures to facilitate participation by DBEs and Small Businesses. The Agency *encourages* each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.

C. Small Business Participation

The Agency will track the participation of all approved businesses throughout the life of this contract. The Agency will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39).

D. DBE Certification

Only firms (1) certified by the Agency or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from RGN measures on this Contract. This DBE determination affects the Agency's tracking and reporting obligations to USDOT.

E. Civil Rights Assurances

As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance *verbatim*:

"The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 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 City of Phoenix deems appropriate."

Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the "contractor" awarded the contract.

SECTION III. PRE-AWARD SUBMITTAL REQUIREMENTS

Documentation due with initial qualifications-based submittal.

A. Form EO1 – Statement of Outreach Commitment

Each Submitter shall sign, date and submit a completed Form EO1 - Statement of Outreach Commitment, with its initial qualifications-based submittal.

B. Failure to Submit Form EO1

Submittals that do not have this form completed and signed will be deemed nonresponsive. A nonresponsive submittal will be disqualified from further evaluation.

SECTION IV. POST-AWARD SUBMITTAL REQUIREMENTS

The Agency has implemented outreach requirements for this Contract. Specifically, the Successful Submitter shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal.

Following the award of the contract and prior to the execution of each phase, as a matter of compliance, the documentation of outreach efforts must be submitted and approved on a date to be determined by Contract Owner:

A. Form EO2 - Small Business Outreach Efforts



City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

Successful Submitter shall complete and submit **Form EO2 - Small Business Outreach Efforts**, documenting its diligent, earnest outreach efforts for professional services, as described in this clause.

Form EO2 and all supporting documentation are due to the Equal Opportunity Department within seven (7) days of bid opening.

Successful Submitter shall list **All DBEs and Small Businesses** contacted by the Successful Submitter. Successful Submitter shall also provide the following minimum information to document its Outreach Efforts in the designated columns within Form EO2:

1. Column A - Small Business Name and Contact Information

Must list each business's full legal name and contact information, including address, phone number and email and/or fax. Successful Submitter shall inquire to obtain the following: the number of number of years in business and its range of annual gross receipts.

2. Column B - Business Status

Indicate the business status. Check all that apply, if known.

- The official DBE database containing eligible DBE and SBC firms can be accessed at: <https://utracs.azdot.gov>
- City of Phoenix SBE Certification Directory can be accessed at: <https://phoenix.diversitycompliance.com>

3. Column C - Scope(s) of Work Solicited

List the NAICS Cods and scope(s) of work solicited for which the small business was considered for participation in the proposal. The solicitation shall include a description of the scope(s) of work being requested.

4. Column D - Solicitation Method

Indicate the solicitation method by which each small business was contacted for your outreach efforts and provide supporting documentation. Supporting documentation must include a copy of the actual solicitation sent to DBEs and Small Businesses. The solicitation may be in the form of letters or attachments to email, phone logs, newspapers and trade papers, outreach events, etc. If using a log as supporting documentation, it must include:

- List the Solicitation Method
- Name of Submitter's Representative
- Name of Company Contacted
- Name of Person Contacted
- Date and Time of Contact
- Details of the Communication

5. Column E - Selection Decision

Indicate the Successful Submitters selection decision for each small business that responded to the solicitation.

Whether or not a firm was selected.

If not selected, provide an explanation of why the firm was not selected.

If selected, indicate the Dollar Value.

6. Column F - Method of Communication of Final Selection Outcome

The Successful Submitter must notify the final selection outcome to all small businesses that responded. The supporting documentation for this notification may be in the form of an email, letter, or a telephone log, etc. This documentation must show the following information regarding the final selection:



City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

- Date firm was notified of outcome
- Method used to communicate selection:
 - Email
 - Phone
 - Fax
 - Letter
 - In person

*Successful Submitter shall provide supporting documentation that shows Submitter has communicated its final selection decisions and outcomes to all DBEs and Small Businesses, including those not chosen to participate in this Contract.

B. Form EO3 - Small Business Utilization Commitment

The Successful Submitter shall complete, sign, date and submit EO3 - Small Business Utilization Commitment, which commits Successful Submitter to the Agency as follows:

1. The firms indicated as "Selected" on Form EO2 Small Business Outreach Efforts, will participate in this Contract;
2. The Successful Submitter will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;
3. Successful Submitter understands and agrees that any and all changes or substitutions to subcontracts with DBE's and Small Businesses must be authorized by the Compliance Specialist for the Contract Owner prior to implementation; and
4. The following statement is true and correct: The proposed total participation of DBE, SBC and SBE firms on this contract will be designated on Form EO3 by the Successful Submitter.

C. Failure to Meet Outreach Requirements

The DBE Compliance Specialist will determine, in writing, whether the Bidder has satisfied all outreach requirements. If the DBE Compliance Specialist determines the Bidder failed to satisfy the outreach requirements, then the DBE Compliance Specialist may determine the bid is nonresponsive. A determination of non-responsiveness *disqualifies* Bidder from further consideration for the Contract award. The Agency shall send written notice to Bidder stating the basis for the DBE Compliance Specialist's decision.

Administrative Reconsideration

In the event the City determines the Bidder failed to submit required documentation to meet the Small Business Outreach Requirements, an opportunity for reconsideration of this determination will be provided. This opportunity for reconsideration will seek to obtain clarification of documentation submitted with the bid.

Within three business days of being informed by the City that the Bidder is not responsive based on insufficient demonstration and/or documentation of Outreach Efforts, the Bidder may submit its written request to:

**City of Phoenix Equal Opportunity Department
Office of the DBELO
200 W. Washington St., 15th Floor
Phoenix, AZ 85003**

If the request for Administrative Reconsideration is not submitted within the allotted three business days, the non-responsive Bidder shall not utilize the DBE Program submittal requirements as the basis for its future protest.

As part of this reconsideration process, the Bidder will have an opportunity to provide written clarification or argument concerning the issue of whether it met the Outreach Requirements or provided sufficient



City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

supporting documentation of this efforts at the time of bid. The Disadvantaged Business Enterprise Liaison Officer (DBELO) for the City shall review solely the written clarification or argument, along with any document(s) originally submitted at the time of bid. No new or revised forms or supporting documentation will be reviewed for consideration.

The DBELO or his designee will send the Bidder a written decision on the reconsideration, explaining the basis for finding that the Bidder did or did not meet the Small Business Outreach Requirements. The result of the DBE reconsideration process is not administratively appealable and cannot be escalated or included in any other protest not related to the DBE Program.

SECTION V. POST-AWARD GENERAL REQUIREMENTS

A. Subcontracting Commitment

The small business subcontractors identified and accepted in the Small Business Outreach documents must have an executed contract* in place prior to the performance of work.

Successful Submitter shall submit to Agency, through the Phoenix Contract Compliance System, all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between Successful Submitter and all subcontractors, upon execution throughout the life of this contract.

The Successful Submitter shall not terminate any approved DBE or Small Business Subcontracts, nor shall the Successful Submitter alter the scope of work or reduce the Subcontract amount, without the DBE Compliance Specialist's prior written approval. Any request to alter a DBE or Small Business Subcontract must be submitted in writing to the DBE Compliance Specialist before any change is made. If the Successful Submitter fails to do so, the Agency may declare Successful Submitter in breach of contract.

*Executed contracts and all lower tier contracts must contain the required Civil Rights Assurances and Prompt Payment provisions.

B. Counting Small Business Participation

The prime contractor may only count expenditures to AZUCP certified DBE subcontractors that perform a commercially useful function on the contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. A DBE subcontractor must perform a minimum of 30% of its subcontract value with its own workforce and equipment before its participation can be counted. DBEs must manage and control the performance of its contract and not be dependent on the prime's personnel and equipment to complete its work. Scope(s) of work not covered in the DBE firm's certification description **will not** be counted as DBE participation.

Commercially Useful Function & Counting of DBE Trucking/Hauling: 49 CFR Part 26.55 Section (d) defines Commercially Useful Function and the counting of DBE participation Trucking/Hauling as follows:

- 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 achieving DBE participation.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.



City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

- 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 lessee DBE provides on the contract.
- The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.
- Amounts paid for dump fees or materials being hauled/dumped cannot be counted as DBE participation.

Counting DBE certified Manufactures, Suppliers, and Brokers:

49 CFR Part 26.55 Section (e) permits the counting of expenditures with DBEs for materials or supplies toward DBE participation as provided in the following:

- If the materials or supplies are obtained from a **DBE manufacturer**, count 100 percent of the cost of the materials or supplies toward DBE participation.
- If the materials or supplies are purchased from a **DBE regular dealer (supplier)**, count 60 percent of the cost of the materials or supplies toward DBE participation.
- If materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, **(broker or manufacturer's rep.)** count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies toward DBE participation.

If an approved DBE allows its DBE certification to expire, or the certification is revoked during the course of the Subcontract, the Agency will consider all work performed by the DBE under the original contract to count as DBE participation. No increased scope of work negotiated after expiration or revocation of the DBE's certification may be counted. Any work performed under a Contract extension granted by the Agency may not be counted as DBE participation.

C. Small Business Substitutions

If the Small Business was approved by the Agency, the Phoenix DBE compliance Specialist will consider whether or not the Successful Submitter has exercised diligent and good-faith efforts to find another Small Business as a replacement. The Successful Submitter shall notify the Phoenix DBE Compliance Specialist in writing of the necessity to substitute a DBE or Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a Small Business may not occur before the Phoenix DBE Compliance Specialist's written approval has been obtained.

D. Relief from Proposed Small Business Utilization

After Contract award, the Agency will not grant relief from the proposed Small Business utilization except in extraordinary circumstances. The Successful Submitter's request to modify Small Business participation must be in writing to the Phoenix DBE Compliance Specialist.

Successful Submitter's written request must set forth the amount of relief sought, evidence that demonstrates why relief is necessary, and any additional relevant information that the Phoenix DBE Compliance Specialist should consider. The Successful Submitter shall include with the request all documentation of Submitter's attempts to subcontract with the Small Business and any other action taken to locate and solicit a replacement Small Business.

E. Prompt Payment of Subcontractors

The prompt payment clause shall be included in every contract and subcontract.

The Successful Submitter must promptly pay its subcontractors, subconsultants, or suppliers. **For projects governed by 49 CFR, Part 26 payment must be made within five (5) calendar days.** If the Successful Submitter diverts any payment received for a DBE's, Small Business, or other Subcontractor's work performed on the Contract or fails to reasonably account for the application or use of the payment, the Agency may declare the Successful Submitter in breach of contract.



City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

Under the prompt-payment provisions of 49 CFR Part 26, the Successful Submitter must ensure prompt and full release of retentions to Subcontractors and suppliers when their scope of work is complete and the Agency has paid Successful Submitter for the work. The Successful Submitter shall pay each Subcontractor's and supplier's retention no later than 30 days after the Agency has paid for the scope(s) of work, regardless if there's outstanding retention held against the Successful Submitter. If the Agency reduces the Successful Submitter's retention, the Successful Submitter shall correspondingly reduce the retentions of Subcontractors and suppliers that have performed satisfactory work.

Nothing in this section prevents the Successful Submitter from enforcing its Subcontract with a Subcontractor or supplier for defective work, late performance, and other claims arising under the Subcontract.

SECTION VI. RECORDS & REPORTING REQUIREMENTS

A. Records

During performance of the Contract, the Successful Submitter shall keep all records necessary to document Small Business participation. The Successful Submitter shall provide the records to the Agency within 72 hours of the Agency's request and at final completion of the Contract. The Agency will prescribe the form, manner, and content of reports. The required records include:

1. A complete listing of all Subcontractors and suppliers on the project;
2. Each Subcontractor's and supplier's scope performed;
3. The dollar value of all subcontracting work, services, and procurement;
4. Copies of all executed Subcontracts, purchase orders, and invoices;
5. Total operating expenses and total costs of goods sales; and
6. Copies of all payment documentation and Change Orders.

B. Reports

Successful Submitter is required to file the following payment reports in the Phoenix Contract Compliance System:

1. **Progress Payments:** By the 15th of *each* month, the Successful Submitter must enter payment information and related supporting documentation into the Agency's web-based certification and compliance reporting system.
 - a. The total of all payments received from the Agency during the previous month.
 - b. All payments made to Subcontractors during the previous month.

The Successful Submitter is responsible for ensuring that subcontractors confirm receipt of payment in the Phoenix Contract Compliance System by the end of each month.

2. **Final Payment:**

Before the Agency processes the Successful Submitter's final payment and/or outstanding retention held against the Successful Submitter, the Successful Submitter shall notate in the Phoenix Contract Compliance System:

- a. The payment to each subcontractor is considered "Final".
- b. Every subcontractor must confirm they have received full and "Final" payment in the Phoenix Contract Compliance System.
- c. For federal reporting purposes, Attachment E must be completed and signed by the Successful Submitter and DBE firm(s) prior to Successful Submitter receiving final payment.

The Successful Submitter is responsible for ensuring that subcontractors confirm the receipt of full and "Final" payment in the Phoenix Contract Compliance System