



City of Phoenix, Arizona
Office of the City Engineer
Design and Construction Procurement

REQUEST FOR QUALIFICATIONS

WATER MAIN REPLACEMENT PROGRAM RIGHT-OF-WAY JOB ORDER CONTRACT 4108JOC193

**PROCUREPHX PRODUCT CATEGORY CODE 912000000
RFx 600000899**

REQUEST FOR QUALIFICATIONS

The City of Phoenix is seeking qualified Contractors to do business on an on-call basis. This Job Order Contract (JOC) is for replacement of water mains citywide. Most work will be performed on residential streets as detailed below. Up to three Contractors may be selected for this JOC based on the City's workload.

In addition to the City and with approval of the Contractors selected under this procurement, the results of this procurement may be extended for use by other eligible municipalities and government agencies under Arizona Revised Statutes title 34.

A Small Business Enterprise goal of 10% has been established for this project.

SECTION I – PROJECT DESCRIPTION

At a minimum, the Contractor will be expected to successfully perform the following construction services, including, but not limited to:

- Installation of 4", 6", 8" and 12" water mains;
- Installation of fire hydrants and fire lines;
- Installation of water service taps;
- Abandonment of existing water mains;
- Removal of existing fire hydrants;
- Removal and replacement of concrete, asphalt, landscaping, etc., as needed, to complete new main work and abandon existing mains; and
- All other work as it relates to this JOC.

This JOC will be for a 36-month duration or \$24 million per JOC, whichever occurs first. The JOC will include an option to renew, based on: the Contractor's satisfactory performance, the City's need for additional services, and funding availability. The option to renew will be for an additional 24-month term or the balance of the maximum contract amount of \$40 million including all JOC amendments. The City intends that each Job Order performed under this JOC will not exceed \$4 million in construction costs, but in no event will any Job Order exceed \$4 million subsequent to Council approval of the change in limits.

The Contractor is required to provide performance and payment bonds for the amount of each Job Order proposal prior to executing the Agreement. The Contractor is required to provide bonds in an amount up to \$4 million.

During the term of the JOC, work is performed as a series of individual Job Orders. Each Job Order, initiated by the City, is defined cooperatively by the City and the Contractor. A scope, schedule, and price are agreed upon, and the Contractor is directed to proceed with the work. Job Orders may include, pre-construction services, construction work, maintenance and as-built documents. Job Order Contracting will also include project management and contract administration as comprised within the Contractor's construction management plan.

SECTION II – SCOPE OF WORK

The scope of work will vary with each Job Order. Minor design services may be required for some Job Orders, however, most will be designed through consultants under a separate contract with the City. City staff may design some projects.

For Job Orders that may require design services, the Contractor shall seek the services of an Arizona registered professional architect and/or engineer to prepare plans for permitting. It is the responsibility of the Contractor to provide cost estimating, project scheduling for design, construction and/or maintenance, and obtain permits if needed from the appropriate City departments. The Contractor is also responsible for:

- Knowledge of and compliance with current City of Phoenix adopted codes
- All other work as it relates to this JOC, and
- All work incidental to this JOC

Prior to each Job Order Agreement, a scope of work conference may be scheduled to define design and construction services required of the Contractor.

The City of Phoenix will provide construction administration, inspection, and acceptance material testing for the Job Orders.

Assumptions about Job Orders:

- All sites will be in the State of Arizona.
- The Contractor will furnish all necessary tools and test equipment required for the performance of its work in accordance with the scope of work.
- All customer-provided documentation is obtained within a reasonable time at project start.
- All customer-required approvals are provided within a reasonable and mutually agreed upon time frame.
- Any work required at each site outside of this scope of work will be performed in accordance with the adjustment process.
- Each Job Order Agreement must be submitted in MAG or CSI format or it will not be accepted. 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 JOC requirements.
- The Contractor shall provide a computerized networked office platform with broadband internet connectivity.
- PROMIS training will be provided through the City of Phoenix to firms under this JOC.

SECTION III - PRE-SUBMITTAL MEETING

A pre-submittal meeting will be held at 9:00 a.m., Phoenix time on April 17, 2020, via WebEx. At this meeting, City staff will discuss the scope of work, general project requirements, and respond to questions from the attendees. It is strongly recommended that interested firms attend via WebEx the pre-submittal meeting. Inquiries regarding the project scope outside of this pre-submittal meeting must be directed to the Contracts Specialist. The public will be able to call the WebEx phone number and listen to the pre-submittal live, as follows:

Pre-submittal meeting number (access code): 289 733 141

Join by phone

Tap to call in from a mobile device (attendees only)
+1-415-655-0001 US Toll
Global call-in numbers [cityofphoenix.webex.com]

Join from a video system or application

Dial 289733141@cityofphoenix.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Need help? Go to <http://help.webex.com> [help.webex.com]

Join using Microsoft Lync or Microsoft Skype for Business

Dial 289733141.cityofphoenix@lync.webex.com

SECTION IV – STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA

The JOC Contractor will be selected through a one-step qualifications-based selection process, based on the following criteria: Subcriteria are listed in order of importance in relation to project services. City of Phoenix project experience is not required.

A. General Information (150 points)

1. Provide a general description of the firm that is proposing to provide the requested services under this Job Order Contract. Explain the legal organization of the proposed firm or team.

2. Provide the following information:
 - a. List the Arizona contractor licenses held by the firm and the key personnel who will be assigned to this Project. Provide the contractor license number. Reference the appropriate licenses held, if needed. In order to be considered for this Project, the contractor must hold the correct license as deemed appropriate by the Arizona Registrar of Contractors prior to submitting a Statement of Qualifications (SOQ) for this project in accordance with Arizona Revised Statute §32-1151.
 - b. Identify the location of the firm's principal office and the home office location of key staff on this project.
 - c. Identify any contract or subcontract held by the firm or officers of the firm, which has been terminated within the last five years. Identify any claims arising from a contract which resulted in litigation or arbitration within the last three years. Briefly describe the circumstances and the outcomes.
 - d. Provide an organization chart showing the qualifying contractor, and the contractor's key personnel down to the superintendent level. (The organizational chart is included in the page limitation.)

B. Experience and Qualifications of the Firm (250 points)

1. Identify at least three comparable projects in which the firm played a major role. The projects listed should show the breadth of the firm's experience and demonstrated capabilities and show the experience in managing multiple trade subcontractors, vendors, and suppliers. For each comparable project identified, provide:
 - a. Description of project
 - b. Role of the firm either as prime or subcontractor
 - c. Project's construction cost
 - d. Construction dates (identify if this included phased construction)
 - e. Project Owner
2. List all City of Phoenix projects by name only where the firm provided general construction services in the last five years either completed or ongoing.

C. Experience of Key Personnel to be Assigned (250 points)

1. For each key person identified, list their length of time with the firm and at least two comparable projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the firm, provide just the project name and the role of the key person. For other projects provide the following:
 - a. Description of project
 - b. Role of the person
 - c. Project's construction cost
 - d. Construction dates
 - e. Project Owner
2. List any proposed subcontractors, including key staff names and the experience and qualifications of these individuals.

D. Approach to Performing the Required Services (350 points)

1. Describe the firm's project management approach including its perspective and experience on partnering, quality control, project scheduling, claims, dispute resolution, changes in the scope of work, and construction safety.
2. Describe systems used for planning; project engineering; and scheduling, estimating, and managing construction.

3. Provide a proposed subcontractor selection plan. The selection plan must select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone. Describe how you intend to implement this subcontractor selection plan. Discuss the benefit that your subcontractor selection plan provides to the project.

E. Reference Check (75 points*)

Use the form provided (Exhibit A) to obtain at least three references (it is preferred no more than one be a City of Phoenix project). If your firm has not completed prior projects with other agencies, you will not be penalized. It is recommended there be references outside the City of Phoenix.

*These points are in addition to the 1,000 points for the SOQ.

SECTION V – SBE REQUIREMENTS

This JOC will be subject to the City of Phoenix Code, Chapter 18, Article VI, pertaining to participation of Small Business Enterprises (SBE) firms in subcontracting opportunities on the Project. Firms that have been certified by the City of Phoenix Equal Opportunity Department are eligible to meet the SBE subcontracting goals.

A SBE utilization goal for this JOC has been established. The goal is based on the City's evaluation of the availability of certified SBE firms in all subcontracting trade areas where work will be performed. Firms should strongly consider how entering into project team or subcontract arrangements will impact their ability to meet the utilization goal.

During the term of this JOC, the JOC Contractor is expected to meet an annual **SBE utilization goal of 10%**, which will be reviewed on a semi-annual basis.

SBE goals must be met or a waiver requested in order to perform a job order under the JOC. For further information, contact the Equal Opportunity Department at 602-534-1279.

SEE EXHIBIT B - SBE CLAUSE AND FORMS FOR MORE INFORMATION.

SECTION VI – SUBMITTAL REQUIREMENTS

New Electronic Submittal Process: Firms interested in this project must submit a Statement of Qualifications (SOQ) electronically through the ProcurePHX online portal.

Submittal requirements are as follows:

- Vendor Information:** All firms must be registered in the City's Vendor Management System prior to submitting a proposal. For new firms, the City will send an email to your firm with a vendor number within two business days of submitting the request. The vendor number should be included on the cover of the SOQ. Information on how to register with the City is available at:

<https://www.phoenix.gov/financesite/Pages/EProc-help.aspx>

If your firm is already registered with the City of Phoenix's ProcurePHX system, please visit <https://eprocurement.phoenix.gov/irj/portal> to login and access the electronic solicitation.

- The product category code for this RFQ is 91200000 and the RFx number is 600000899**
- Submittals:**
 - Submittals must be uploaded to the ProcurePhx website by the submittal due date and time.
 - Submit only one SOQ electronically, in .PDF format only, addressing all evaluation criteria. No hard copies will be accepted.
 - Clearly display the firm name, vendor number, project title, and JOC number on the cover of the SOQ.

- A maximum of **12 pages** is permitted to address all content in the SOQ submittal (*Maximum page limit includes evaluation criteria and all additional content. It does not include information sheet.*)
- Submit the Statement of Qualifications by **12:00 noon, Phoenix time, on Friday, May 1, 2020.**
- Upload one complete version of the SOQ addressing all the criteria. Upload format is .PDF.
- Page size must still meet requirements of 8½” x 11”
- Font size must not be less than 10 point
- Content count:
 - ✓ Each side of a page containing evaluation criteria and additional content will be counted toward the maximum page limit noted above.
 - ✓ Pages that have project photos, charts and/or graphs will be counted towards the maximum page limit noted above.
 - ✓ Front and back covers, information sheet, Table of Contents pages, and divider (tab) pages **will NOT** be counted toward the maximum page limit noted above, unless they include evaluation criteria and additional content that could be considered by the selection panel.

Information Sheet: Provide an information sheet that includes project title, project number, RFx number, firm name, address, phone number, vendor number, and the name, title, email address and signature of your contact person for the project. Do not include any additional information.

Evaluation Criteria: Address the SOQ evaluation criteria and include a project organizational chart.

Additional Content: Resumes and other information may be included (*content shall be included within the permitted maximum page limit*).

Bonding Statement: Upload a statement of the firm’s bonding capacity from a Surety Company (A- or better for the prior four quarters) as a separate attachment to your SOQ submittal. (*This bond statement will not be counted towards the maximum number of pages*).

Note: All pages exceeding the specified maximum page limit will be removed from the submittal and not considered in evaluating a submitted SOQ.

GROUNDINGS FOR DISQUALIFICATION:

Please be advised that the following **will be grounds for disqualification**, and will be strictly enforced:

- Failure to submit electronically through the ProcurePHX online portal by the due date and time.
- Violating the “Contact with City Employees” policy contained in this RFQ
- Failure to provide bonding statement

SECTION VII – SELECTION PROCESS AND SCHEDULE

The successful firms will be selected through a qualifications-based selection process. Interested firms will submit a Statement of Qualifications (SOQ). A Selection Panel will evaluate each SOQ according to the criteria set forth in Section IV above. The City will select a firm based on the SOQs received; no formal interviews will be conducted. The City may conduct a due diligence review on the firms receiving the highest evaluation.

Presubmittal Meeting via WebEx	April 17, 2020
SOQs due	May 1, 2020
Job Order Workshop	June 2020

If the City is unsuccessful in negotiating a JOC with the most-qualified firm(s), the City may then negotiate with the next most qualified firm until a JOC is executed, or the City may decide to terminate the selection process. Once a JOC is executed with the successful firm, the procurement is complete.

<https://solicitations.phoenix.gov/awards>

Firms selected for this project will be notified directly by the City. Notification to all other firms on the status of a selection on this project will be posted on the City of Phoenix’s “Tabulations, Awards, and Recommendations” website:

SECTION VIII – GENERAL INFORMATION

The selected Contractor should expect to comply with the Arizona State Statutes Title 34 and City of Phoenix Design and Construction Procurement’s contract provisions.

Citywide Capital Improvement Projects - Consulting and contractor services supporting the City’s Capital Improvement Projects are procured under the authority of the City Engineer, currently located within the Street Transportation Department (STR). Design and Construction Procurement coordinates the citywide consulting and construction contracting procurement processes.

Changes to Request for Qualifications. *Any changes to this Request for Qualifications (RFQ) will be in the form of a Notification.* The City of Phoenix shall not be held responsible for any oral instructions. Notifications are available on both the Current Opportunities and ProcurePHX webpage

It shall be the responsibility of the registered RFQ holder to determine, prior to the submittal of the Statement of Qualifications, if a Notification has been issued. Registered RFQ holders may refer to the web page or call the Contracts Specialist (listed below) to ascertain if a Notification has been issued for this project.

Alternate Format - For more information or a copy of this publication in an alternate format, contact the Contract Specialist (listed below) - Voice or 602-256-4286 – TTY. Requests will only be honored if made within the first week of the advertising period.

Release of Project Information - The City shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from the City.

City Rights - The City of Phoenix reserves the right to reject any or all Statements of Qualifications, to waive any informality or irregularity in any Statement of Qualifications received, and to be the sole judge of the merits of the respective Statements of Qualifications received.

Contact with City Employees - Beginning on the date the RFQ is issued and until the date the contract is awarded or the RFQ withdrawn, all persons or entities that respond to the RFQ, including their authorized employees, agents, representatives, proposed partner(s), subcontractor(s), joint venture(s), member(s), or any of their lobbyists or attorneys (collectively the Proposer), will refrain from any direct or indirect contact with any person (other than the designated Contract Specialist) who may play a part in the selection process, including members of the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department heads, the Mayor and other members of the Phoenix City Council. As long as the RFQ solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to this RFQ solicitation with City staff.

Proposers may discuss their proposal or the RFQ solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Contract Specialist (listed below), conducted in person at 200 West Washington, Phoenix, Arizona 85003, and are posted as open meetings with the City Clerk at least twenty-four (24) hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

This policy is intended to create a level playing field for all Proposers, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY WILL BE DISQUALIFIED.**

Conflict of Interest - The City reserves the right to disqualify any Proposer on the basis of any real or apparent conflict of interest that is disclosed by the proposal submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Proposer submitting a proposal herein

waves any right to object now or at any future time, before any body or agency, including but not limited to, the City Council of the City of Phoenix or any court.

Protest Procedures – Firms wishing to respond to disqualification or a procurement outcome may refer to the Code of the City of Phoenix Chapter 2, Article XII, Section 2-187 to 2-190.4, which governs protest procedures utilized throughout the selection process. The procedures may be reviewed through the City of Phoenix website at:

<http://www.codepublishing.com/az/phoenix/>

A copy of the Protest Policy is also available online at:

<https://www.phoenix.gov/streets/procurement-opportunities>

Good Standing - Any JOC Contractor that currently contracts with the City must be in good standing for its Statement of Qualifications (SOQ) to be considered responsive. For the purpose of the RFQ, good standing refers to compliance with all contractual provisions, including payment of financial obligations.

Questions - Questions pertaining to this selection process or contract issues should be directed to the Contract Specialist, Viorel D. Gheorghita at (602) 256-4107.

EXHIBIT A
CONTRACTOR REFERENCE CHECK INSTRUCTIONS, FORM, AND SAMPLE LETTER

The attached Contractor Performance Evaluation Form is to be provided to the agencies or entities for which your firm has recently provided services similar to those requested for this project. Provide the evaluation form to the Owner, or the Owner's representative directly responsible for oversight of the project to complete and submit to the email box listed below.

The first three references submitted will be accepted and the scores utilized as part of the evaluation process. Each reference check is worth up to 25 points for a total of up to 75 points available.

The form is to be completed by the agency or entity and uploaded to the (email box) at:
soq.referencechecks@phoenix.gov

The procurement identifier is:

6000000899

Also attached is a sample performance evaluation cover letter that may be used when sending the reference check request.

Sample Contractor Performance Evaluation Cover Letter

Sample Cover Letter
Contact Name
Address of Reference

(Your Name) is responding to a Request for Qualifications (RFQ) from the City of Phoenix Office of the City Engineer's Design and Construction Procurement section.

The City is requesting reference information related to our past performance. As a part of the response submittal process, the City is requesting performance evaluations from agencies that our firm has performed services for either in the past or is currently receiving services.

I would appreciate your cooperation in completing the attached Contractor Performance Evaluation form and return by email the completed form by **12:00 pm Phoenix time** on May 1, 2020 to soq.referencechecks@phoenix.gov attention:

Viorel D. Gheorghita
City of Phoenix, Office of the City Engineer, Design & Construction Procurement
Email Address: Viorel.Gheorghita@phoenix.gov
Telephone Number: 602-256-4107

Failure to submit the Contractor Performance Evaluation form by the above date will have a negative impact on the proposal we submit for this service. Your cooperation in submitting this form by this date is appreciated.

If you have any questions regarding this request, please contact (your name) at (your telephone number).

Sincerely,

INSTRUCTIONS FOR COMPLETING CONTRACTOR PERFORMANCE EVALUATION

Evaluate the contractor's contract performance in each of the rating areas listed below. On the Contractor Performance Evaluation form, circle the rating from 1 to 4 that most closely matches your evaluation of the contractor's performance. Comments are not required but appreciated. **Every rating area must be scored.**

The Design and Construction Procurement section will use the information from this form to evaluate firms competing for contract award. **This completed form will become public record and upon request, will be released to the contractor or any other entity.**

Please submit the completed form to the address indicated on the bottom of the Contractor Performance Evaluation form. Thank you for your time and your cooperation.

WATER MAIN REPLACEMENT PROGRAM RIGHT-OF-WAY JOB ORDER CONTRACT 4108JOC193

CONTRACTOR PERFORMANCE EVALUATION FOR _____
(firm name)

In the box below, provide the project title, contracted services provided by the firm, and start and completion date of services. This form is to be completed by the Owner, or the Owner's representative directly responsible for oversight of the project. The project services evaluated must be relevant to the services of this project. Every rating area must be scored.

RATINGS: Summarize the Contractor's performance and circle the number below that corresponds to the performance rating for each category. Please see the rating scale.

1 = Unsatisfactory; 2 = Poor; 3 = Good; 4 = Excellent

HOW WOULD YOU RANK THE BUSINESS RELATIONSHIP BETWEEN THE OWNER AND THE FIRM?	4 3 2 1	Comments:
WAS THE TEAM PRESENTED IN THE PROPOSAL THE TEAM THAT WORKED ON THE PROJECT TO COMPLETION?	4 3 2 1	Comments:
WAS STAFF PROACTIVE IN SOLVING PROBLEMS THAT MAY HAVE OCCURRED ON THE PROJECT?	4 3 2 1	Comments:
WAS THE CONTRACTED SCOPE OF SERVICES COMPLETED ON TIME AND WITHIN BUDGET?	4 3 2 1	Comments:
HOW WOULD YOU RATE THE QUALITY OF WORK PERFORMED BY THIS FIRM ON YOUR PROJECT?	4 3 2 1	Comments:

DID THE FIRM RECOMMEND EFFICIENCIES OR PROVIDE INNOVATIVE IDEAS OR SUGGESTIONS?	4 3 2 1	Comments:
WOULD YOU BE WILLING TO CONTRACT WITH THIS FIRM AGAIN? (YES = 1 point)	YES NO	Comments:
TOTAL SCORE		(MAXIMUM 25 POINTS)

Reference Evaluation Provided By:

Name and Title: _____

Agency/Organization: _____

Date: _____

Telephone Number: _____

Email completed form by *May 1, 2020* by 12:00 pm Phoenix time to:

soq.referencechecks@phoenix.gov

***EMAIL SUBJECT LINE SHOULD REFERENCE Rfx 6000000899**

The document should reference the project number and firm for which the reference check is being submitted. If no project number is available, reference the service and firm for which the reference check is being submitted.

EXHIBIT B
SMALL BUSINESS ENTERPRISE CLAUSE AND FORMS



City of Phoenix

JOB ORDER CONTRACT CLAUSE

PROJECT #: 4108JOC193

CONTRACT #: TBD

PROJECT NAME: Water Main Replacement Program Right-of-Way JOC

The City of Phoenix Small Business Enterprise Program (SBE) is managed and administered by the Equal Opportunity Department, Contract Compliance Division. Phoenix is one of the fastest growing, multicultural cities in the country and has shown a historical commitment to business diversity. The City strives to advance the economic growth of businesses through its Small Business Enterprise (SBE) Program.

Through a coordinated effort among several city departments, the SBE Program provides SBE certification, procurement opportunities, construction subcontracting utilization, small business management and technical assistance and educational services and networking opportunities.

The Small Business Enterprise (SBE) participation goal for this project is as follows:

SBE Required Goal = 10%

An annual SBE subcontracting participation goal of 10% has been established under this Contract. The Job Order Contract (JOC) Prime Contractor is required to demonstrate good faith efforts to utilize certified SBE firms to achieve this goal on each Job Order Agreement (JOA) and must meet the above stated goal annually during each year of the contract and overall at the term of the contract.

Failure to meet the required annual goal without sufficient demonstration of good faith efforts shall be deemed as a breach the SBE provisions of this JOC.

The JOC Prime Contractor agrees if the Equal Opportunity Department determines that the contractor will fail, or has failed, to meet the SBE subcontracting goals, and/or has failed to act in good faith to ensure compliance with the SBE provisions contained herein; it shall deem the contractor "noncompliant" and not in good standing with this City contract.

A noncompliant status shall result in the rejection of all future contract bids or offers for all projects or other procurements with the City until such time that the contractor has cured its breaches and demonstrates that it has faithfully performed its approved SBE utilization plan and all other provisions of this article required to be deemed in good standing. In addition, the City may also exercise its option to impose any or all of the following remedies:

- Withholding from the contractor ten percent (10%) of all future payments on the involved eligible project until it is determined that the contractor is in compliance.
- Withholding from the contractor all future payments on the involved project until it is determined that the contractor is in compliance.

Failure to cure a non-compliance status by the date provided by the City may result in further action, including but not limited to any or all of the following penalties:

- Rejection of all future bids or offers from the contractor for any eligible project with the City or any of its departments or divisions for a period of (1) year after termination of the contract.
- Cancellation of the contract.

SBE PROGRAM DEFINITIONS

Bidder is an individual, partnership, joint venture, limited liability company, corporation, or firm submitting a proposal or bid to the City of Phoenix to perform services or provide goods required by the contract. The submittal may be direct or through an authorized representative.

Broker is defined as a firm that arranges or expedites services or transactions through the use of individuals not directly employed by the company. Brokers are not regular suppliers. Only costs associated with the fees and commission paid to the certified firm for providing such services may be applied towards the SBE contract goal.

Commercially Useful Function means that an SBE prime contractor or subcontractor 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. An SBE must perform at least 75% of the total cost of its contract with its own work force in order to be determined to be performing a commercially useful function on the contract.

Contract is a written agreement obligating the seller or business enterprise to furnish goods or services as proposed to the Purchaser, and obligating them to pay for such goods or services.

Manufacturer means 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.

Proposed SBE Subcontracting Participation Percentage means the sum of all proposed SBE Utilization shall be the numerator and the Total Base Bid shall be the denominator.

Purchaser or Buyer means, for purposes of this contract, the City of Phoenix.

Supplier is defined as firm that has 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 supplier 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 leased to the public in the usual course of business (Wholesaler and Regular Dealer also fall under this category).

Small Business Enterprise means a business with gross receipts or number of employees consistent with the definition of a small business as defined in Chapter 18, Article VIII of the Phoenix City Code AND has been certified as a SBE with the City of Phoenix.

Subcontract is a contract at any tier below the prime contract, including purchase orders.

Submitter is an individual, partnership, joint venture, corporation, or firm providing a submittal to the City to perform services required by the contract. The submittal may be direct or through an authorized representative.

Total Base Bid means "The total of all the unit prices, or the lump sum total, including contingencies and allowances as determined by the City."

SECTION I. GENERAL REQUIREMENTS

- A. The Contractor agrees to meet the SBE annual goal established for this Contract by making opportunities available for SBE firms to participate in the work of Job Orders each year that the contract is in force. In the case of multi-year contracts, the established SBE goal must be met each year the contract is in force.
- B. The contractor shall participate in compliance reviews as determined necessary by the City. This includes, but is not limited to participating in on-site reviews, providing signed copies of subcontracts and/or purchase orders with each SBE listed on the Contractor's Statement of Proposed SBE Utilization form, completing monthly payment audit reports on the City's online database. Reports are to reflect the participation of all SBE and non-SBE subcontractors that has occurred during each audit period. In addition to the above, the Contractor shall comply with any and all requests for information the City deems appropriate for effectively monitoring this contract for compliance with the SBE Program

requirements. **All Monthly audit reports are to be completed online by the 15th of every month.** (<https://phoenix.diversitycompliance.com>).

- C. The Contractor shall provide a Statement of Proposed SBE Utilization form identifying the SBE subcontractors that will be utilized on each Job Order Agreement to meet the required annual contract goal. The Statement of Proposed SBE Utilization Form is due to the Equal Opportunity Department at the beginning of each JOA.
- D. The contractor shall not withhold monies from subcontractor as part of retention on this job order contract. In cases where the City is withholding monies from the Contractor for this purpose, Contractor may only hold
- that percentage which is being held by the City. 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. The contractor has 14 days from the date their retention reduction takes affect to reduce retention to the subcontractors.
- E. **ONLY** firms certified by the City of Phoenix under Chapter 18, Article VIII of the Phoenix City Code are eligible to fulfill the SBE subcontracting goal established for this Job Order Contract. A directory of all eligible certified SBE firms is available online at <https://phoenix.diversitycompliance.com>
- F. SBE participation may only be counted in trade, product, or service areas for which the firm has been certified. The directory web site identifies the trade, product, and/or service areas performed or supplied by each certified SBE that may be counted towards meeting the utilization goals on this contract.
- G. The Contractor shall not remove, or reduce the scope of work or value for the certified SBE firms listed on the Statement of Proposed SBE Utilization form, without prior written approval of the Contract Compliance section of the City of Phoenix Equal Opportunity Department.
- H. If a firm is not certified at the time the Statement of Proposed SBE Utilization form is required for submittal, that firm's participation will not be counted towards meeting the annual and Contract SBE goal.

SECTION II. GOOD FAITH EFFORTS TO MEET SBE GOAL

- A. The following documentation is required to demonstrate that a good faith effort has been made to engage SBE subcontractors in the performance of this Contract:
- Copy of notification sent to SBE firms that the Contractor has subcontracting opportunities and is requesting subcontractor bids. This should include the scope of work to be bid and performed on the project.
 - Documentation of each SBE firm contacted and the responses of the SBE firms or other action taken as a result of the contact. Documentation of contact with SBE firms may include, fax logs, telephone logs, mail receipts, etc., including documentation of the number of times that firms were contacted, the dates of contact, and the name, phone number, fax number, and address of the contact person associated with each SBE firm
 - Documentation of bid responses/quotes from all subcontractors who bid to perform work on the project in the areas that SBE firms were also bidding on, including information regarding the reasons why SBE bids were not considered.
 - Maintenance of all records reflecting the Contractor's efforts to obtain SBE participation through contact with SBE contractor organizations and/or with SBE assistance organizations.
 - Sub-division of Job Order work into smaller, economically feasible segments to facilitate the participation of SBE firms.
- B. The following factors are illustrative of matters which the City of Phoenix will consider in judging whether the Contractor made good faith efforts on this contract:

- The number of contacts attempted or made with SBE firms that perform in trade areas where subcontracting work was available.
 - The timeliness of contacts made with SBE firms so as to allow the firms a reasonable amount of time to respond.
 - Attempts made to break down portions of the Job Orders and/or Contract into economically feasible units to facilitate SBE participation.
 - Whether the Contractor negotiated in good faith with interested SBE's and did not reject a bid as unqualified without sound reason.
- C. Nothing in this clause shall be construed to require the utilization of SBE firms that are not qualified or available to perform work. The JOC Contractor is responsible for compliance with state law which requires that only licensed contractors work on this Job Order. Suppliers, manufacturers, and service providers do not require a license.

SECTION III. ANNUAL SBE GOAL ATTAINMENT REVIEW

- A. At a minimum, the City will conduct an annual review of the performance of the Contractor in achieving the annual and Contract SBE goal.
- B. The Contractor will be required to provide to the City information related to its good faith efforts to identify, contract with, and utilize certified SBE firms in the performance of Job Order work on the contract. This information may include, but is not limited to, the number and dollar value of all Job Orders issued, a record of contacts made to solicit the participation SBE firms, and a listing of all subcontractors performing work on each Job Order including the dollar value of subcontracted work.
- C. The Equal Opportunity Department will perform annual reviews of the SBE participation on this contract to determine if the Contractor is in compliance with meeting the annual SBE goal requirement. Results obtained from these reviews will be provided to the Contractor and the Goal Setting Committee, made up of members of the Street and Equal Opportunity (EOD) Departments.
- D. The City may, at its discretion, conduct a review at any time during the course of the contract. The Contractor agrees to participate fully in such reviews and provide all information required for the City to determine the Contractor's compliance with the SBE requirements of the Contract.

SECTION IV. COUNTING SBE PARTICIPATION

- A. Participation on the contract will be calculated based on that portion (dollar value) of the Contract that SBE firms actually perform with their own forces. This includes the cost of supplies and materials obtained by an SBE firm for the work the firm will perform, **except** when supplies and/or equipment is purchased or leased from the Contractor or its affiliate.
- B. Expenditures that may be counted in full towards meeting the SBE goal are:
- Monies paid to certified SBE firms that operate and maintain an establishment or factory to produce, on the premises, the materials or supplies purchased for the contracts.
 - Expenditures to certified SBE firms that operate and maintain a factory or facility that substantially alters materials or supplies to meet the specifications of the contract before resale.
 - Expenditures to certified SBE firms, including fees and commissions charged to provide bona fide technical and professional personnel recruitment for the Contract. The total cost must be comparable to the industry charges customarily charged for the same or similar services.
 - Expenditures to certified SBE firms, including fees and commissions, charged to provide bonds and insurance specifically required for the performance of the Contract.
- C. There is a limitation on the use of regular suppliers and brokers to fulfill the SBE goal established for this Contract. For purposes of this Contract, suppliers and brokers shall be defined in accordance with Section I of this Clause.

D. Proposed expenditures to brokers and suppliers can be used to meet the utilization goal, provided that expenditures do not exceed 25 percent (25%) of the total SBE goal requirement. Contractors may count one hundred percent (100%) of the dollars proposed to be paid to a SBE supplier, and all costs associated with the fees and commission to be paid to a SBE broker. The combined SBE utilization in these two areas may not exceed the 25% limitation.

Example: An SBE goal of 10% has been established on a project where the contractor has submitted a base bid of \$1,000,000. This results in a dollar goal of \$100,000 to be subcontracted to SBE's. The contractor proposes to contract with a SBE supplier for \$100,000. Only \$25,000, or 25 percent (25%), may be counted towards achievement of the SBE goal for this project. The remaining amount must be achieved through the use of firms that are not suppliers or brokers.

E. Payments to brokers, or expenditures for product or services made to a SBE business that is not a supplier or regular dealer as defined herein may only be counted up to the dollar amount actually retained as fees and commissions. The funds that flow through the broker to other firms for the product or services being supplied may not be counted.

Example: A firm providing uniformed officers for security or traffic control charges the Contractor \$30 per hourly for the services of the uniformed officers. The officers are not direct employees of the broker but are "at will" contractors. They are paid a flat rate of \$21 per hour and are responsible for their own employment taxes on these monies earned. Only the \$9 retained by the broker as fees and commissions can be counted towards meeting the SBE goal.

F. Trucking & Hauling: The amount of a trucking/hauling subcontract that may be counted towards the utilization requirements may be limited.

- An SBE must itself own and operate at least one fully licensed, insured, and operational truck that will be used on the contract. In addition, trucks the SBE leases as part of a long-term leasing agreement may be counted as part of the trucking firm's workforce with the following conditions. Contractors may receive full credit for the work the SBE firm performs with trucks it leases on a long-term basis from another SBE firm. Contractors may also count the work performed by Non-SBE trucks the SBE leases, up to the value of transportation services provided on the contract by all the trucks the SBE owns and leases from other SBE firms. All Non-SBE trucks leased on a long-term basis must be operated by employees of the SBE trucking firm. Any additional non-SBE leased trucks may only be credited for the fees or commissions the SBE subcontractor retains over and above the cost of the lease arrangement. **All leasing agreements must be reviewed and approved by the Equal Opportunity Department prior to the subcontractor starting work.**

Example: A SBE trucking firm uses seven trucks on a job. Two are owned by the SBE and one is leased from another certified SBE firm. Four trucks are leased from a non-SBE. The amount paid to the SBE for the services of three of the SBE trucks can be counted in full towards meeting the SBE requirements. Only the brokerage fees that the SBE subcontractor receives for leasing the remaining truck(s) may be counted as SBE utilization.

SECTION V. SBE PRIME CONTRACTOR

A Contractor that has been granted SBE certification with the City of Phoenix cannot meet the SBE goal through the work that it self-performs. The goal can only be met through goods or services that are sublet other eligible SBE firms.

SECTION VI. RECORDS AND REPORTING REQUIREMENTS

1. Records

During performance of the Contract, the Successful Submitter shall keep all records necessary to document the participation of all subcontractors and suppliers. 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 may include but not limited to:

- a) A complete listing of all Subcontractors and suppliers on the project;

- b) Each Subcontractor's and supplier's scope performed;
- c) The dollar value of all subcontracting work, services, and procurement;
- d) Copies of all executed Subcontracts, purchase orders, and invoices; and
- e) Copies of all payment documentation.

2. Reports

- a. The contractor shall participate in all compliance reviews determined necessary by the City. This includes, but is not limited to participating in on-site reviews, providing monthly utilization reports of SBE activity, providing signed copies of subcontracts and/or purchase orders with each SBE listed on the Bidder's Statement of Proposed SBE Utilization form, and complying with any and all requests for information the City deems appropriate for effectively monitoring this contract for compliance with the SBE Program requirements.
- b. The contractor shall provide regular, monthly report/audit information that will assist us in effectively monitoring your compliance with the SBE Program requirements. This shall include listing all subcontractors working on the contract and reporting payments into the Certification and Compliance System <https://phoenix.diversitycompliance.com>. Reporting audits shall include all payments received from the City and payments you have issued to all subcontractors and suppliers. **Copies of the first 2 pages of the Pay Request submittal are required with each report. All Monthly audit reports are to be completed online by the 15th of every month.** (<https://phoenix.diversitycompliance.com>).
 - i. The total of all payments received from the City during the previous month.
 - ii. The first two pages of each payment application submitted for those payments.
 - iii. All payments made to Subcontractors during the previous month.
- c. For each Job Order Agreement, the contractor shall provide a completed and signed:
 - i. **Contractor's Statement of Proposed SBE Utilization** - The form shall document the name of each SBE firm that will be awarded a subcontract; services to be performed by each subcontractor; dollar amount to be paid for those services; and the total dollar amount that is being proposed in SBE participation.
 - ii. **A Letter of Intent to Perform as a SBE Subcontractor/Supplier** (required for each SBE subcontractor/supplier proposed) The form shall be completed by the SBE firm that will be awarded the subcontract The form documents services to be performed by the subcontractor/supplier and the total dollar amount of the subcontract that will be awarded to the SBE. Only the services performed in the area(s) described by the SBE's certification description can be counted towards the SBE goal requirement.

Before the Agency processes the Successful Submitter's final payment and/or outstanding retention held against the Successful Submitter, the Successful Submitter shall submit to the Agency a final certification of full and final payment to each Subcontractor in the form prescribed by the Agency. The form must be completed and certified by the Successful Submitter's and each Subcontractor's duly authorized agents.

SECTION VII. PERFORMANCE OF A COMMERCIALY USEFUL FUNCTION

The prime contractor may count only expenditures to SBE subcontractors that perform a commercially useful function in the work of the contract, as defined in Chapter 18 Article VI of the City Code. A "commercially useful function" constitutes performing real and actual services related to the contract.

SBE subcontractors may enter into second-tier subcontracts consistent with normal industry practices. If an SBE subcontracts greater than twenty-five (**25**) percent of the work of their contract, the SBE subcontractor shall be presumed not to be performing a commercially useful function. In this event, the prime contractor will not be allowed to claim any expenditure to the SBE subcontractor.

SECTION VIII. FAILURE TO COMPLY WITH THE SBE PROGRAM REQUIREMENTS

If the Equal Opportunity Department determines that the contractor will fail, or has failed to meet the SBE subcontracting goals, and/or has failed to act in good faith to ensure compliance with the SBE conditions of its

contract; it shall deem the contractor “noncompliant” and not in good standing. A noncompliant status shall result in the rejection of all future contract bids or offers for all projects or other procurements with the City until such time that the contractor has cured its breaches and demonstrates that it has faithfully performed its approved SBE utilization plan and all other provisions of this article required to be deemed in good standing. In addition to this action, the City may also exercise its option to impose any or all of the following remedies:

1. Withholding from the contractor ten percent (10%) of all future payments on the involved eligible project until it is determined that the contractor is in compliance.
2. Withholding from the contractor all future payments on the involved project until it is determined that the contractor is in compliance.

Failure to cure a non-compliance status within the time frame provided by the City may result in further action, including but not limited to imposing any or all of the following sanctions:

1. Rejection of all future bids or offers from the contractor for any eligible project with the City or any of its departments or divisions for a period of (1) year after substantial completion of the contract.
2. Cancellation of the contract.

SECTION IX. SUBCONTRACT ASSURANCES

The following applies to contracts with **Small Business Enterprise Program (JOC)** requirements.

Each contract signed by the Agency and the Successful Bidder and each subcontract signed by the Successful Bidder with a Subcontractor, including Subcontractors with lower tier Subcontractors must include the following assurances verbatim:

Prompt Payment of Subcontractors *The Contractor and Subcontractor shall promptly pay its lower tier subcontractors, sub consultants, or suppliers upon receipt of payment from the City of Phoenix (Agency).*

Progress Payments: In accordance with the Arizona Revised Statutes (ARS), Section 34-221(G), the Contractor(s) shall promptly pay its subcontractors, sub consultants, or suppliers within seven (7) calendar days of receipt of each progress payment from the Agency. Any diversion by the Contractor(s) of payments received for work performed on the contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for a declaration of breach of the contract with the Agency.

Changes to Subcontracts and Values *The City of Phoenix prohibits Contractor(s) from altering the Contractor’s Statement of Proposed SBE Utilization form without receiving prior, written consent from the City. The Equal Opportunity Department must be informed, in writing, and in advance of the following:*

- *Reduction to the scope of work to be performed by subcontractors working on the contract*
- *Changes in any of the subcontract values resulting in a reduced dollar amount*
- *Replacement and/or release of any subcontractor after contract award*

Contractor(s) and Subcontractor(s) are required to complete a Request for Exemption Form and have the written approval of the Contract Compliance Office prior to taking action on any of the above listed matters related to SBE subcontractors.

In the event that any provision of this subcontract varies from the provisions of the contract or subcontract, the provisions for SBE contract compliance as contained in Administrative Regulation 1.89, Section IX, shall provide definitive guidance.

Disclaimer: *Nothing in this section prevents the Contractor or Subcontractor from enforcing its subcontract with a lower tier Subcontractor or supplier for defective work, late performance, and other claims arising under the Subcontract.*