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

PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS

AVIATION DEPARTMENT

PHOENIX SKY HARBOR INTERNATIONAL AIRPORT
TERMINAL 4 SOUTH 1 CONCOURSE CONCRETE APRON

PROJECT NO. AV08000083 - FAA
AIP NO. 3-04-0029-0XX-20XX

AGREEMENT ____________
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**TERMINAL 4 SOUTH 1 CONCOURSE CONCRETE APRON**

**PROJECT NO.:** AV08000083 FAA
**FEDERAL AID/AIP NO.:** 3-04-0029-0XX-20XX

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CALL FOR BIDS

PHOENIX SKY HARBOR INTERNATIONAL AIRPORT
TERMINAL 4 SOUTH 1 CONCOURSE CONCRETE APRON
DESIGN-BID-BUILD
PROJECT NO. AV08000083 - FAA
AIP NO. 3-04-0029-0XX-20XX

PROCUREPHX PRODUCT CATEGORY CODE 912000000
RFx 6000001010

BIDS WILL BE DUE: TUESDAY, SEPTEMBER 15, 2020 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, SEPTEMBER 15, 2020 AT 2:30 P.M.
VIA WEBEX VIDEO / PHONE ACCESS
*All times are local Phoenix time

SCOPE OF WORK

The City of Phoenix is seeking a qualified contractor to provide construction services for the construction of the Terminal 4 South 1 Concourse Concrete Apron (T4S1) at Phoenix Sky Harbor International Airport.

The scope of work consists of constructing the new concrete aircraft apron around the currently under construction Terminal 4 South Concourse Number 1. The project consists of the construction of approximately 48,000 square yards of apron pavement and includes, but not limited to the following work items: airfield concrete pavement, GSE/Vehicular concrete pavement, asphalt pavement, pavement base course, drainage structures, jet blast deflection systems, minor electrical work, bollards, manhole and storm drain adjustments, and pavement joint sealants. All work will be constructed in accordance with FAA Standards. Work will be performed in conjunction and cooperation of the ongoing construction of the Terminal 4 South 1 Concourse.

This is a federal-aid project. 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, shall be the minimum wages paid to the described classes of laborers and mechanics employed or working on the site to perform the contract.

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.

No Disadvantaged Business Enterprise goal 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 for both the Design Bid Build and Engineering Services on Friday, August 28, 2020, at 1:00 p.m., local time, via WebEx. 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 WebEx Meeting Information:

Pre-Bid Meeting number (access code): 133 897 4136
Meeting password: mwRmgCpU337

Join meeting [cityofphoenix.webex.com]

Tap to join from a mobile device (attendees only)
+1-415-655-0001,,1338974136## US Toll

Join by phone
+1-415-655-0001 US Toll
Global call-in numbers [cityofphoenix.webex.com]

Join from a video system or application
Dial 1338974136@cityofphoenix.webex.com
You can also dial 173.243.2.68 and enter your meeting number

Join using Microsoft Lync or Microsoft Skype for Business
Dial 1338974136.cityofphoenix@lync.webex.com


REQUEST FOR BID PACKET

On Thursday, August 20, 2020, 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 and register as a plan holder for the project. The plan holder list is available for viewing within the project folder.

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

The public will be able to call the WebEx phone number and listen to the Bid Opening live, as follows:

Bid Opening WebEx Meeting Instructions:
Bid Opening Meeting number (access code): 133 380 5323
Meeting password: xcXVCJHr443
Join meeting [cityofphoenix.webex.com]

Tap to join from a mobile device (attendees only)
+1-415-655-0001,,1333805323## US Toll

Join by phone
+1-415-655-0001 US Toll
Global call-in numbers [cityofphoenix.webex.com]

Join from a video system or application
Dial 1333805323@cityofphoenix.webex.com
You can also dial 173.243.2.68 and enter your meeting number

Join using Microsoft Lync or Microsoft Skype for Business
Dial 1333805323.cityofphoenix@lync.webex.com


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 Contracts Specialist Samantha B. Ansmann at (602) 681-5361 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 the Contracts Specialist Samantha B. Ansmann at (602) 681-5361 or by email at samantha.anスマann@phoenix.gov.

Ed Zuercher
City Manager

Eric J. Froberg, PE
City Engineer

Published: Arizona Business Gazette
Date: August 20, 2020
Date: August 27, 2020
District: 8
INFORMATION FOR BIDDERS

1. 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 and may be downloaded from the eProcurement site at:

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

(OR)

the City of Phoenix’s “Solicitations” webpage at:

http://solicitations.phoenix.gov

For additional information prior to submitting your bid, contact:

Plans, Technical/Special Provisions, Proposal or Specifications:
NAME: Samantha B. Ansmann, Design and Construction Procurement
ADDRESS: 200 W. Washington Street, 5th Floor, Phoenix, AZ 85003-1611
PHONE: (602) 681-5361   E-MAIL: samantha.ansmann@phoenix.gov

Federal Labor Standards/Davis-Bacon and related Acts contact:
Labor Compliance Office: (602) 261-8287

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.

2. REQUEST FOR SUBSTITUTIONS

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

A. 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)

B. The prime bidder, at his own expense, will 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.

C. 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.

D. The request will be submitted to Design and Construction Procurement, Attention Samantha B. Ansmann, Contracts Specialist, Fifth Floor, Phoenix City Hall, 200 W. Washington Street, Phoenix, Arizona 85003-1611 or via email to samantha.ansmann@phoenix.gov.
3. **BID BOND**

Bidders must submit a properly completed proposal guarantee, certified check, cashier’s check or on the surety bond provided, for an amount not less than ten percent of the total bid amount 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 will 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 will 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 will not be executed by an individual surety or sureties even if the requirements of Section 7-101 are satisfied. The City Clerk will return the certified check, cashier’s check, or surety bond 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.*

4. **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 “List of Major Subcontractors and Suppliers” form.

To assist in eliminating the practice of bid shopping on City construction projects, the bidder will list all Major Subcontractors and Suppliers (including DBE) 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 “List of Major Subcontractors and Suppliers” 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 construction projects for a period of one year.

The list of All Subcontractors and Suppliers will be provided on the “List of All Subcontractors and Suppliers” form. *Failure to properly complete and sign this form will result in bid rejection.* This form is due three calendar days after bid opening by 5:00 p.m. A bid will be deemed non-responsive if a properly completed and signed “List of All Subcontractors and Suppliers” form is not submitted.

5. **BID SUBMITTAL**

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

Bid of (Firm’s Name, Address, and Phone Number)  
For: PSHIA TERMINAL 4 SOUTH 1 CONCOURSE CONCRETE APRON  
City of Phoenix Project Number: AV08000083  
Federal Aid Project Number: 3-04-0029-0XX-20XX

Sealed bids will be submitted to the bid box located on the 1st Floor of the Phoenix City Hall Building, 200 W. Washington Street, Phoenix, AZ 85003, prior to the time and date specified for bid opening.
6. **BID WITHDRAWALS**

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

“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 188. Proposals, read or unread, will not be returned to the bidders until after determination of award has been made.

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

It will 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, will be acknowledged by bidder on Page P.-1. All addenda (if any) will be available online within each project’s folder at the following website:

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

(OR)

the City of Phoenix’s “Solicitations” webpage at:

http://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 eProcurement site website in order to ascertain if any addenda have been issued for the project.

8. **BID SUBMITTAL CHECK LIST**

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.

**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 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

- Acknowledge all addenda? (Page P. -1)
- Complete all of the Bid Proposal forms? (Page P. -1 to P.- 5 and P.S. -1)
Include your Bid Bond (rated A- or better for the prior four quarters) or Guarantee Cashier’s Check? (Page S.B.-1)

Include the Buy American Requirement Certification form, Attachment 1? (Pages F.P.-1-2)

Include the Certification Regarding Lobbying and Influencing Federal Employees form, Attachment 2? (Page F.P.-3)

Include the Rights in Data and Rights in Inventions Certification form, Attachment 3? (Pages F.P.-4-5)

Include the Rights Trade Restriction Clause form, Attachment 4? (Pages F.P.-6-7)

Include the Restrictions on Federal Public Works Projects Certification form, Attachment 5? (Pages F.P.-8-9)

Include the Certification of Non-Segregated Facilities Certification form, Attachment 7? (Page F.P.-11)

Include the Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters form, Attachment 8? (Pages F.P.-12-13)

Include the Certification Tax Delinquency and Felony Convictions? (Page F.P.-14)

Documentation of Outreach Efforts form, Columns A through D – DBE Attachment A? (Page D.B.E.F.-1)

Include the complete List of Major Subcontractors and Suppliers form? (Page L.O.S.-1)

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

POST-BID SUBMITTAL CHECKLIST

All bidders wishing to remain in contention for award of the contract must submit completed contracts documents listed below. The documents must be submitted to Design and Construction Procurement, 200 W. Washington Street, 5th Floor, or can be sent by email to samantha.anismann@phoenix.gov within 3 calendar days after bid opening by 5:00 p.m.

Submit completed List of All Subcontractors and Suppliers form (L.O.S.-2) (3 calendar days after bid opening by 5:00 p.m.)

Completed Documentation of Outreach Efforts form – DBE Attachment A (Page D.B.E.F.-1) (3 calendar days after bid opening by 5:00 p.m.)

Completed Small Business Utilization Commitment form – DBE Attachment B (Page D.B.E.F.-2) (3 calendar days after bid opening by 5:00 p.m.)

Submit Bidders Disclosure Statement? (Page B.D.S.-1 to B.D.S.-4) (3 calendar days after bid opening by 5:00 p.m.)

Submit Affidavit of Identity (A.O.I.-1) if you are a sole proprietor (3 calendar days after bid opening by 5:00 p.m.)

PRIOR TO CONTRACT EXECUTION

I.F.B. - 4
9. PERMITS

CITY RESPONSIBILITY – The City will be responsible for City of Phoenix review and permit(s) fees for building and demolition permits. The City will also pay review fees for grading and drainage, water, sewer, and landscaping. The City will also pay for utility design fees for permanent services.

CONTRACTOR RESPONSIBILITY – The Contractor will be responsible for all other permits and review fees not specifically listed above. The Contractor is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until the project is accepted. Arrangements for construction water are the Contractor's responsibility. The Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices. Copies of these permits and notices must be provided to the City's Project Manager prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit will also be provided to the Project Manager. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

10. CONTRACT AWARD

Contract award will be made to the responsive and responsible bidder based on the low total base bid. 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 will 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.

11. 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.

12. 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 will be effective at the time and in the manner specified in the notification to the Contractor of the termination. Such termination will be without prejudice to any claims which the Owner may have against the Contractor. In the event of a termination for convenience, the Contractor will be paid only the direct value of its completed work and materials supplied as of the date of termination, and Contractor will 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 will be converted to a termination for convenience in accordance with the provisions of this Agreement.

13. SURVEY

The Contractor will set the construction stakes establishing lines, grades, and elevations to include necessary utilities and appurtenances and will be responsible for their conformance with plans and specifications. All construction survey is incidental to the Contractors bid proposal. Construction
staking will be done in accordance with the applicable provisions of the Public Works Design and Construction Management Division's "Standard Requirements for Staking, As-Built, and Quantity Calculations", dated January 1, 1980. The Engineer will establish or designate a control line and benchmark of known location and elevation for use as a reference.

The Contractor will furnish the Engineer a certified set of calculations and measurements to fully support the derivation of all pay quantities. This information will be prepared by a registrant of the Arizona State Board of Technical Registration.
The Contractor will furnish the Engineer a set of "Record Drawings". Record drawings will be certified by a registrant of the Arizona State Board of Technical Registration.

14. RECORD DRAWINGS

The Contractor will maintain a record set of plans at the job site. These will be kept legible and current and will show all changes or work added in a contrasting, reproducible color. When the project is substantially complete, the Contractor will submit these plans to the Engineer for approval. When landscaping is included, the Contractor will submit, prior to final inspection, corrected landscape drawings showing the location of all utility services, controller, pipe, valves, and wiring. The Engineer will 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.

15. TESTINGS

Soils backfill, pad, welding, roofing should be included in the contractor’s proposal/price. Copies of all testing needed to be simultaneous sent via email or messenger to the developer.

16. PRECONSTRUCTION CONFERENCE

After the Contract documents are successfully completed, to include bonds, insurance, and signatures, and prior to the commencement of any work on the project, the Project Manager, will schedule a Pre-Construction Conference.

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.

Minimum attendance by the Contractor will 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.

17. 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 him. Contractor agrees to comply with these Federal Laws in performing under this Agreement and to permit City inspection of his personnel records to verify such compliance.

18. 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:
A. 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.

B. A breach of a warranty under paragraph A will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

C. 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 A.

19. **CONTRACT WORKER BACKGROUND SCREENING**

Contractor agrees that all Contract Workers that Contractor allows to perform work under this Contract shall be subject to background and security checks and screening (Background Screening). Contractor must pay for the cost of all Background Screenings, unless otherwise provided in the Scope of Work. Contractor agrees that Background Screenings required by this Section is necessary to preserve and protect public health, safety, and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Contract. The City does not warrant or represent that the minimum requirements are sufficient to protect Contractor from any liability that may arise out of Contractor’s work under this Contract or Contractor’s failure to comply with this Section. Therefore, in addition to the Background Screening measures set forth below, Contractor and its Contract Workers shall take such other reasonable, prudent, and necessary measures to further preserve and protect public health, safety, and welfare when providing work under this Contract.

As used in this Section, “Contract Worker” means a person performing work for the City, including (1) a person or entity that has a contract with the City, (2) a worker of a person or entity that has a contract with the City, (3) a worker of a subcontractor of a person or entity that has a contract with the City, and (4) a worker of a tenant of the City. (City of Phoenix A.R. 4.45)

**Legal Worker Background Check**
Pursuant to Arizona Revised Statutes (A.R.S.) § 41-4401, Contractor must verify the legal Arizona worker status of each Contract Worker. Contractor must conduct and all Contract Workers must pass a background check for their real identity and legal name prior to performing any work under this Contract.

**City Rights Regarding Security Inquiries**
In addition to a Legal Worker Background Check, the City reserves the right to require Contractor to:

- Have a Contract Worker provide fingerprints and execute any document that is necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22 or both;

- Act on newly acquired information, whether or not the information should have been previously discovered.

- Unilaterally change its standards and criteria related to the acceptability of Contract Workers; and

- Object, at any time and for any reason, to a Contract Worker performing work under this Contract, including supervision and oversight services.

**Contractor Certification**
By entering into this Contract, Contractor certifies that Contractor has read the Background Screening requirements and criteria in this Section, understands them, and that all Background
Screening information furnished to the City is accurate, complete, and current. A Contract Worker that is rejected for work under this Contract shall not perform any work under any other contract or engagement Contractor has with the City without the City’s prior written approval.

**Contractor’s Contracts and Subcontracts**
Contractor shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for work performed under this Contract, including supervision and oversight services.

**Materiality of Background Screening Requirements and Indemnity**
The Background Screening requirements of this Section are material to the City’s decision to enter into this Contract. Any breach of this Section by Contractor shall be deemed a material breach of this Contract. In addition to any other indemnification provision in this Contract, Contractor shall defend, indemnify, and hold harmless the City from and against any and all claims, actions, liabilities, damages, losses, and expenses (Claims) arising out of this Background Screening Section, including the Contractor’s disqualification of any Contract Worker or the City’s failure to enforce this Section.

**Continuing Duty and Audit**
Contractor’s obligation to ensure that all Contract Workers pass a Background Screening pursuant to Section shall continue throughout the entire term of this Contract. Contractor shall immediately notify the City of any change to a Contract Worker’s Background Screening. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor’s compliance with this Section.

**20. CONTRACT WORKER ACCESS CONTROLS AND AIRPORT SECURITY BADGE REQUIREMENTS**
Contractor shall not allow a Contract Worker to begin work under this Contract until Contractor has completed the Background Screening required by the City and the City has issued the appropriate airport security badge to the Contract Worker. The airport security badge will grant the Contract Worker unescorted access authority only to the area or areas of the Airport that the Contract Worker must enter in order to perform work under this Contract. When a Contract Worker’s work in any area ends, the Contract Worker’s access authority to that area ends. Any Contract Worker that attempts to enter a restricted area or sterile area, as those terms are defined below, of the Airport without proper authority is an immediate breach of this Contract.

**SECURITY IDENTIFICATION DISPLAY AREA (SIDA) BADGE PROCESS**
Each Contract Worker that needs unescorted access authority to a restricted or sterile area of the Airport in order to perform work under this Contract must receive a security identification display area (SIDA) badge from the Aviation Department’s Public Safety and Security Division’s Badging Office. Contractor must make arrangements with the City to have each Contract Worker proceed to the Badging Office for processing. The Badging Office will not issue a SIDA badge until the Contract Worker passes a fingerprint-based criminal history background check (CHRC) required by federal law (49 C.F.R. § 1542.209) and § 4-22(C) of the Phoenix City Code and passes a security threat assessment as mandated by the TSA through a security directive (49 C.F.R. § 1542.303). The Contract Worker shall comply with all requirements of and furnish all information requested by the Badging Office. Contractor shall pay for all fees associated with SIDA badging process, unless otherwise provided in the Scope of Work. Fees will be assessed according to § 4-22(D) of the Phoenix City Code. Current badging procedures and fees are available for review at https://www.skyharbor.com/security/BadgingInformation.

As used in this Section, “restricted area” means the secured area and SIDA area of the Airport. “Secured area” means the part of the Airport in which certain federal security measures are implemented and where airlines enplane and deplane passengers and load baggage. “SIDA area” means the secured area and other areas designated by the Aviation Department, which include air
operation areas, ground transportation areas, and the Rental Car Center security doors. “Sterile area” means the part of the Airport that provides passengers access to board aircraft and is controlled by the TSA or the airline by screening of persons and property. See § 4-22 of the Phoenix City Code and Rules 05-01 and 05-09 of the Aviation Department Rules and Regulations for a complete definition of the foregoing terms.

21. RISK-BASED BACKGROUND CHECK PROCESS

The City has established two levels of risk for Contract Worker background checks: standard risk and maximum risk. If the Scope of Work changes, the City may change the level of risk, which may require Contractor conduct additional investigations and incur additional costs in order to process a background check and obtain the required airport security badge. Contract Workers who receive a SIDA badge are exempt from a standard and maximum risk background check.

A STANDARD RISK CHECK is required for all non-exempt Contract Workers performing work under this Contract.

As used in this Section, “background check” means the fact-gathering process described in City of Phoenix A.R. 4.45 that is conducted to obtain information regarding a Contract Worker’s legal Arizona eligibility, criminal history, driving history, certifications, and other matters that may affect the Contract Worker’s ability or fitness to perform work under this Contract.

Before any work is performed under this Contract, Contractor shall provide the City with a list of its Contract Workers.

If any dispute arises related to a background check process or criminal history check information, then Contractor and the affected Contract Worker will resolve the dispute. The City will not get involved in resolving any such dispute.

In making the determination whether information in a background check renders the Contract Worker disqualified, Contractor should be guided by the following principles and guidelines:

A. Disqualification should not be based solely on a criminal conviction, unless the conviction related to performance under this Contract.
B. Arrests that did not result in a conviction being entered or charges being filed may not be considered.
C. Not all criminal convictions or other negative information obtained in a background check will disqualify a Contract Worker from working under this Contract.
D. Contractor must evaluate the relevance of the information to the work the Contract Worker will perform under this Contract.
E. Contractor must consider the following factors in determining whether negative background information disqualifies a Contract Worker:
   ● Duties of the position
   ● Time, nature, and number of negative events and convictions
   ● Attempts and extent of rehabilitation efforts
   ● The relation between the duties of the position and the nature of the crime committed

The analysis of whether any information in a background check is a potentially disqualifying factor involves looking at the requirements of the Contract, the Scope of Work, where the work will be performed, the need for access to restricted areas, and the type of persons or places the Contract Worker will encounter. Contractor should review the background check results and determine whether the nature of the conviction or crime reported would create a risk to the City based on the Contract’s requirements.
For a Contract Worker requiring a standard risk background check potentially disqualifying convictions include a record of theft, identity theft, computer fraud or abuse, burglary, arson, crimes against property, violent crimes, or other crimes involving dishonesty, or embezzlement.

For a Contract Worker requiring a maximum risk background check, potentially disqualifying convictions include a record of child molestation, assault, sexual assault, crimes against a person, public indecency, drug offenses, forgery, theft, burglary, arson, crimes against property, violent crimes, crimes for financial gain, identity theft, computer fraud or abuse, and embezzlement.

If a background check shows that the disposition of an arrest is unknown, then Contractor must determine the disposition of the arrest.

Contractor will obtain a Contract Worker disclosure from each Contract Worker who will perform work under this Contract. Contractor will provide the Contract Worker disclosures to the City upon request. "Contract Worker disclosure" means an affidavit by a Contract Worker disclosing his or her prior criminal record. The Contract Worker disclosure must list all criminal convictions, including the nature of the crime, the date of the conviction, and the location where the crime and conviction occurred. The Contract Worker disclosure also grants to the City the right to review the background check results. (City of Phoenix A.R. 4.45)

In a standard risk background check, Contractor must review the results of the background check and decide if a Contract Worker should be disqualified for work under this Contract. Contractor must engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker. After Contractor has made its decisions, a list of names of qualified Contract Workers will be provided to the City.

In a maximum risk background check, Contractor must conduct the same review as in a standard risk background check. However, when submitting its list of qualified Contract Workers, Contractor must also submit the results of the background checks to the City for review. After its review, the City will either approve or deny each Contract Worker.

If the City approves a Contract Worker, then the City will notify Contractor of that fact and the Aviation Department will issue the appropriate airport security badge to the Contract Worker.

If the City denies a Contract Worker, then the City will notify Contractor of that fact and Contractor will reevaluate the Contract Worker to determine whether the person should be disqualified. If Contractor believes there are extenuating circumstances that suggest that the Contract Worker should not be disqualified, then Contractor will discuss those circumstances with the City. The City will review the matter and its decision on disqualification is final.

The City may set up a secure folder or drop box for confidential materials related to maximum risk background checks. The City will not keep records related to maximum risk background checks after they are reviewed.

If Contractor is a sole proprietor, Contractor must submit to the City a copy of his or her own background check and a background check for all business partners, member, and employees that will work under this Contract and for whom the background check requirements of City of Phoenix A.R. 4.45 apply.

Contractor shall determine whether a Contract Worker is disqualified from performing work under this Contract.
If Contractor is a sole proprietor, Contractor must submit to the City a copy of his or her own background check and a background check for all business partners, member, and employees that will work under this Contract and for whom the background check requirements of City of Phoenix A.R. 4.45 apply.

Contractor shall determine whether a Contract Worker is disqualified from performing work under this Contract.

STANDARD RISK BACKGROUND CHECK
A standard risk background check must be conducted for the term of this Contract or five years, whichever is shorter. Contractor shall conduct a standard risk background check on all Contract Workers whose work under this Contract requires:

- An airport security badge or key for access to City facilities,
- Access to sensitive information, confidential records, personal identifying information, or restricted City information, or
- Unescorted access to City facilities during normal and non-business hours.

“Personal identifying information” is defined by City of Phoenix A.R. 4.45.

Scope of the Standard Risk Background Check
The standard risk background check conducted by Contractor must be based on the real identity and legal name of the Contract Worker and include felony and misdemeanor records checks from any county in the United States, the state of Arizona, and any other jurisdiction where the Contract Worker has lived at any time in the last seven years.

22. AIRPORT SECURITY BADGE HANDLING PROCEDURES
Contractor will comply with the following airport security badge handling procedures:

Key Access Procedures. If a Contract Worker requires keyed access to enter a City facility, then a separate key will be issued and Contractor must complete a return form and submit it to the City for each key issued.

Stolen or Lost Badges or Keys. Contractor shall immediately report any lost or stolen airport security badge or key to the City. A new airport security badge application or key issue form must be completed and submitted along with payment of the applicable fee prior to issuance of a new airport security badge or key.

Return of Badges or Keys. All airport security badges and keys are the property of the City and must be returned to the Badging Office within one business day after the Contract Worker's access to a City facility is no longer required under this Contract. Contractor shall collect a Contract Worker's airport security badge and all keys (1) when the Contract Worker's employment is terminated, (2) when the Contract Worker's services are no longer required at a City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first.

Employee Identification and Access. Contract Workers must have an airport security badge and some form of verifiable company identification in their possession at all times while working under this Contract, unless otherwise provided in the Scope of Work. Contract Workers are strictly prohibited from entering any area of the Airport that is not authorized by the airport security badge or key issued to them by the Badging Office. The Aviation Department will determine who will have access to the Airport. Contract
Workers access authority is only valid during their scheduled hours. Contractor shall provide the City with updates and changes in personnel as they occur.

**Badge Fees.** Contractor shall pay the airport security badge fees set forth in § 4-11(D) of the Phoenix City Code.

23. **CONTRACTOR'S BREACH**
Contractor agrees that the access control, airport security badge, and key requirements in this Section are necessary to preserve and protect public health, safety, and welfare. Therefore, Contractor shall be deemed in immediate breach of this Section upon the occurrence of any of the following:

- A Contract Worker gains access to a City facility or a restricted or secured area of the Airport without the proper airport security badge or key
- A Contract Worker uses another person’s airport security badge or key to gain or attempt to gain access to a City facility or a restricted or secured area of the Airport
- A Contract Worker begins work under this Contract without passing the appropriate Background Screening and being issued the proper airport security badge or key
- A Contract Worker or Contractor submits false, incomplete, or misleading Background Screening information or submits any false, incomplete, or misleading information in an attempt to improperly obtain an airport security badge or key
- Contractor fails to collect and timely return a Contract Worker's airport security badge or key to the City within three days of the (1) date the Contract Worker's employment terminates, (2) the date the Contract Worker is assigned to another City facility, or (3) when this Contract terminates, is cancelled, or expires, whichever occurs first

24. **LIQUIDATED DAMAGES AND REMEDIES FOR BREACH**
In addition to any other remedy available to the City at law or in equity, including the right to terminate this Contract, Contractor shall be liable for and shall pay to the City a stipulated damage in the amount of $1,000.00 for each breach of this Section and for each time a Contract Worker entered a restricted or secured area of the Airport without proper authority. Contractor agrees that the stipulated damage amount is not a penalty, but is a reasonable estimate of the actual harm to the City caused by a breach and that the harm was very difficult to estimate at the time this Contract was entered into.

25. **CONTRACTOR CERTIFICATION**
Contractor certifies to the City that Contractor has read the foregoing Background Screening requirements and that all Background Screening information Contractor furnished to the City is accurate, complete, and current. Contractor further certifies to the City that Contractor has satisfied all Background Screening requirements and verified the legal worker status of each Contract Worker as required under this Section.

26. **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.

27. **BUSINESS AND OPERATION LICENSES, PERMITS AND CERTIFICATIONS REQUIRED**
On or before the submission of a bid for this project, bidder must possess all federal, state, county and City licenses, permits, certifications and any other legal authorizations required by law to transact business and to perform the services set forth in this Agreement (collectively “Business Licenses”). Bidder will submit a completed Bidder’s Disclosure Statement as set forth in Pages B.D.S. - 1 to B.D.S. - 4, to be submitted within 3 days of bid opening by 5 p.m. and provide the following Business License information: (i) proper State of Arizona contractor’s license classification and number; (ii) City of Phoenix transaction privilege license number; (iii) federal tax identification number; and (iv) any special use or other zoning permits required for Bidder’s operation and performance of the services under this Agreement. Unless provided otherwise in this solicitation, Bidder will be deemed non-responsive and the bid rejected if Bidder fails to possess the proper Business Licenses at the time of bid or fails to submit a substantially completed Bidder’s Disclosure Statement as specified in this paragraph.

28. TAX LIABILITIES; DISCLOSURE OF CONVICTIONS AND BREACH(S) OF CONTRACT

On or before the award of the contract for this project, the successful bidder will: (i) file all applicable tax returns and will 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 will be deemed non-responsible 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.

29. LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED)

The Contractor will 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.

30. 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, will comply with Phoenix City Code Chapter 2, Section 187.” A copy of the Protest Policy is also available online at:

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

31. 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 will immediately notify, in writing, the Project Engineer of any potential utility-related delay claim.

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

The Contractor will coordinate an investigation of the situation with the affected utility and the City's Project Manager. 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 will determine to document requirements of the affected utility for their acceptance of responsibility for the claims. The Contractor will 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 will obtain written confirmation from the utility company involved of their documentation requirements.

32. **PROMPT PAYMENT (DBE)**

The City adheres to the prompt payment provisions of ARS 34-221. A prompt payment clause will be included in every City Contract or subcontract on projects funded either in whole or in part by USDOT. The City’s prompt payment clause reads as follows:

A. **Contractor Payment to Subcontractor or Supplier.** Contractor will pay to its subcontractors or material suppliers and each subcontractor will pay to its subcontractor or material supplier, within seven (7) days of receipt of each progress payment, the amounts attributable to the Contractor, subcontractor, or material supplier for work performed or materials supplied. In addition, any reduction of retainage to the Contractor must also result in a like reduction to subcontractors for their work successfully completed within 14 days of the reduction of the retainage to the Contractor. No Contract between Contractor and its Contractors, subcontractors, and material suppliers may materially alter the rights of any Contractor, subcontractor, or material supplier to receive prompt and timely payment as provided herein. Any diversion by Contractor, or any subcontractor, of payments received for work performed on a Contract, or failure to reasonably account for the application or use of such payments, constitutes sufficient grounds for City to take any one or more of the following actions: 1) withhold future payments including retainage until proper disbursement has been made; 2) refusal of all future bids or offers from the Contractor for a period not to exceed one year or 3) cancellation of the Contract.

B. **Alternate Dispute Resolution.** If entitlement to the payment is in dispute, the parties to the dispute will submit the matter to either: a) binding arbitration, b) to some other binding alternative dispute resolution (ADR), or c) a City of Phoenix facilitated mediation process within a reasonable period of time, not to exceed fourteen (14) calendar days. Once an ADR determination has been made on any disputed claim, the determination will be implemented by the disputing parties within seven (7) calendar days of that determination.

C. **Inspection and Audit.** The provisions of A.R.S. Section 35-214, will apply to this Agreement. City will perform the inspection and audit function specified therein and such inspection and audit may include, at City’s option, sole and unfettered discretion, the prompt payment requirements contained in Paragraph 1, above.

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

E. **Inclusion of this Provision in Subcontracts.** Contractor will include the provisions of these paragraphs in every subcontract, including procurement of materials and leases of equipment.

F. **No Subcontractor Claim.** Nothing contained in this section will provide a basis for any subcontractor to assert any claim against the City of Phoenix for its administration, enforcement or waiver of the provisions of this Prompt Payment provision.
As this is a federally assisted project, it is subject to the requirements of Executive Order 11246 pertaining to Equal Employment Opportunity.

33. **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 will follow the procedure provided in the Federal Acquisition Regulation (FAR) clause 52.214-27, found in 48 CFR Part 52.

34. **ADA AND ANSI ACCESS OF PREMISES DURING CONSTRUCTION**

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

35. **PROJECT MANAGEMENT INFORMATION SYSTEM (UNIFIER)**

The Aviation Department requires all project related documents to be uploaded to UNIFIER. The following information provides a guideline for utilization. Any questions related to the requirements of UNIFIER should be directed to the Aviation Department Project Manager.

A. 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. The City will provide training to the Contractor’s designated staff members and will provide online access to the UNIFIER software.

B. The Contractor can expect to use this ASP to process all primary level tri-partite contract documents related to the construction phase of the Project including but not limited to: requests for interpretation/information, potential Change Orders, Change Orders, construction meeting minutes, Submittals, Design Professional’s supplemental instructions and Payment Requests.

C. The Contractor will be required to process information into electronic digital form. In order to fulfill this requirement, the Contractor will provide all necessary equipment to perform the functions necessary to generate, convert, store, maintain, connect to web-based ASP and transfer electronic data.

D. The Contractor will provide a computerized networked office platform with broadband internet connectivity. Wired or wireless is acceptable. This platform will function well in a web-based environment utilizing an internet browser compatible with the Aviation Department UNIFIER ASP system.

36. **PAYMENT RETENTION**

At the start of construction, ten percent of all pay requests will be retained by the City to guarantee complete performance of the contract. When the work is fifty percent complete, this amount may be reduced to five percent providing that construction progress and quality of work is acceptable to the City. Any funds, which are withheld from the Contractor, will be paid no later than sixty days after completion of the Contract and settlement of all claims.
In lieu of retention, the Contractor may provide as a substitute, an assignment of time certificates of deposit (CDs) from a bank licensed by Arizona, securities guaranteed by the United States, securities of the United States, the state of Arizona, Arizona counties, Arizona municipalities, Arizona school districts, or shares of savings and loan institutions authorized to transact business in Arizona.

CDs assigned to the City must be maintained at the City's single servicing bank, currently Chase Bank, Arizona, in the form of time deposit receipt accounts. CDs will be assigned exclusively for the benefit of the City of Phoenix pursuant to the City's form of escrow Agreement. Escrow Agreement forms may be obtained from the Finance Department by calling (602) 262-4918.

Securities deposited in lieu of retention must be deposited into a separate account with a bank having a branch located in the City of Phoenix and be assigned exclusively for the benefit of the City of Phoenix pursuant to the City's form of escrow Agreement. Escrow Agreement forms may be obtained from the Finance Department by calling (602) 262-4918.

37. FAIR TREATMENT OF WORKERS

The Contractor will 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 will 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 will 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.

38. 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 will 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 will 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 will 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 will 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 will 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 will 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.

39. Wage Determination
In the event that a wage determination decision of the Secretary of Labor is required for a project, (attached hereto on pages G.W.D. – 1 to 6 and made a part hereof), and has been superseded by any subsequent wage determination decision(s) published up to and including ten (10) days prior to bid opening, the most recent applicable wage decision will be incorporated by reference, and the successful bidder agrees to be bound by it, regardless of what is contained in the specifications. State or local wage rates will not apply if the state or local wage rate exceeds the corresponding Federal Wage Determination rate.

40. Workforce Reporting Requirements
The contractor will submit payrolls electronically through the internet to the City of Phoenix web-based certified payroll tracking system. The City of Phoenix uses the “LCP Tracker” web-site to track the certified payroll information. Additional information regarding the use of this system is available at https://lcptracker.com. This requirement will also apply to every lower-tier subcontractor that is required to provide weekly certified payroll reports.

41. Payment Withholding
Payrolls, including subcontractor’s payrolls, must be submitted weekly no later than seven (7) days after each pay period ending date. Payments may be withheld in part or in full until payrolls are received and reviewed to assure compliance of the Federal Labor Standards. Failure to clarify, when requested, discrepancies between hourly wages paid individual workers and the minimum hourly wages required by the Federal Wage Decisions contained in the Contract documents may also affect the complete or timely release of payments.

42. Labor Compliance Preconstruction Conference
On all federally assisted projects, a Labor Compliance Conference must be held after project award and prior to the established Notice to Proceed. This meeting is separate from and in addition to the pre-construction conference.

The successful bidder will schedule the conference by calling the Labor Compliance Office, (602) 261-8287. Minimum attendance will be a corporate officer, who is authorized to execute and sign documents for the firm and the payroll representative of the prime, sub and lower-tier Contractors.

43. DBE Participation
This project will utilize Federal funds provided by the Federal Aviation Administration (FAA) and is subject to the requirements of 49 Code of Federal Regulations (CFR) Part 26 and the U.S. Department of Transportation DBE Program. The Contractor is required to meet the DBE program requirements and agrees to provide opportunities for the fair and full utilization of DBEs. For this business opportunity, the City has not established a race- and gender-conscious DBE participation goal.
To participate in this business opportunity as a recognized DBE, only firms certified by the City or another AZUCP member and certified in the specified scopes of work will be considered in calculating DBE participation resulting from RGN measures on this contract.

The Contractor agrees that the following will be incorporated into all subcontracts of this Contract entered into by the General Contractor:

“The contractor, subrecipient, or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor will 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 and/or any other such remedy as the City deems appropriate.”

Refer to the attached Disadvantaged Business Enterprise Program Clause, pages D.B.E.C. - 1 to 10 and Disadvantaged Business Enterprise Program Reporting Forms D.B.E.F. - 1 to 2.

Failure to provide the following forms may be just cause for declaring your bid non-responsive.

- Completed Documentation of Outreach Efforts Attachment A form (Page D.B.E.F. -1)

44. FEDERAL REQUIREMENTS COMPLIANCE

This project will utilize federal funds provided by the Federal Aviation Administration. The Contractor will be required to meet all federal requirements as they pertain to this contract. Page C.F.R. - 1 contains a listing of the minimum requirements.

Buy American Preference
The Contractor is required to comply with Buy American preferences established under Title 49 U.S.C. Section 50101. Unless otherwise formally approved by the Federal Aviation Administration, all acquired steel and manufactured products installed must be produced in the United States. Be advised that the North American Free Trade Agreement does not apply to Aviation Improvement Projects.

As a condition of bid responsiveness, Bidders must submit the appropriate Buy American certification with their proposal. Installation of equipment/material that are manufactured in the United States and for which no formal waiver exists is ineligible. While the FAA does have the authority to waive the Buy American provisions if specific conditions exist, the Contractor will not assume such a waiver is valid unless written approval is granted by the FAA. The “Buy American Requirement” certification form (Attachment 1) is due with the bid. Failure to properly complete, sign and submit the form with bid will result in bid rejection.

Non-Segregated Facilities
The Contractor and its subcontractors certifies that they do not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The “Certification of Non-Segregated Facilities” certification form (Attachment 7) is due with the bid. Failure to properly complete, sign and submit the form with bid will result in bid rejection.

Lobbying and Influencing Federal Employees
No Federal appropriated funds will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of
Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the Contractor will complete and submit Standard Form-LLL, “Disclosure of Lobby activities,” in accordance with its instructions. The “Affidavit By Contractor That There was No Collusion in the Selection of the Contract” certification form (Attachment 2) is due with the bid. Failure to properly complete, sign and submit the form with bid will result in bid rejection.

Rights to Inventions
All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which the contract is executed. The “Rights in Data and Rights in Invention” certification form (Attachment 3) is due with the bid. Failure to properly complete, sign and submit the form with bid will result in bid rejection.

Debarment, Suspension, Ineligibility and Voluntary Exclusion
The Contractor and its subconsultants/subcontractors, by submission of its bid proposal certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting its bid proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Contractor or any lower tier participant is unable to certify this statement, it will attach an explanation to its bid. The “Certification Regarding Debarment, Suspension, Proposed Debarment, and other Responsibility Matters” form (Attachment 8) is due with the bid. Failure to properly complete, sign and submit the form with bid will result in bid rejection.

Trade Restriction Clause
The “Trade Restriction Clause” form (Attachment 4) is due with the bid. Failure to properly complete, sign and submit the form with bid will result in bid rejection.

Restrictions on Public Works Contracts
The “Restrictions on Federal Public Works Projects Certification” form (Attachment 5) is due with the bid. Failure to properly complete, sign and submit the form with bid will result in bid rejection.

Equal Employment Opportunity
The Contractor agrees that it will undertake affirmative action in conformance with 14 CFR Part 152, Subpart E, to insure that no person will on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. The Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. The Contractor further agrees that it will require its covered suborganizations to provide assurances to the Contractor that they similarly will undertake affirmative action and that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.

If the Contractor is a construction contractor on the Airport, the Contractor will submit to the City of Phoenix the reports required by paragraph (e) of 14 C.F.R. § 152.415, on the same basis as stated in paragraph (e) of 14 C.F.R. § 152.415, and the Contractor will require each subcontractor to submit the reports required by paragraph (f) of 14 C.F.R. § 152.415 through the Contractor to the City of Phoenix, for transmittal by the City of Phoenix to the FAA. The “Contractors Statement on Previous Contracts subject to EEO Clause” certification form (Attachment 6) is due prior to contract award.

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Federal Affirmative Action Requirements
The Contractor will comply with the federal Affirmative Action requirements as provided by 14 C.F.R. Part 152, subpart E during the term of the Contract and the Contractor will require its subcontractors to also comply with the federal Affirmative Action requirements as set out above, and as may be amended. Failure of the Contractor and its subcontractors to maintain compliance during the term of the Contract, including renewal options, is a material breach and may result in termination of this Contract.

45. RELEASE OF INFORMATION – ADVERTISING AND PROMOTION

The Contractor and its subcontractors will not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Agreement, the services, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the City, except as required by law. The name of any site on which services are performed will not be used in any advertising or other promotional context by Contractor and its subcontractors without the prior written consent of the City.
Disadvantaged Business Enterprise (DBE) Program
Race- and Gender-Neutral Contract Clause (Low Bid)

PROJECT #: AV08000083
PROJECT TITLE: PHX Terminal 4 South 1 Concourse Concrete Apron

Disadvantaged Business Enterprise (DBE) Program

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).

Business to Government Now (B2G) means the web-based certification and compliance system used to track and monitor DBE and Small Business Participation. The B2G 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 Bidder to solicit participation from interested and qualified DBEs and other Small Businesses. Bidder 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 Small Businesses, and communicate and record Bidder’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 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 directly to Transit as a DBE or Small Business.

**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, successful bidder, or Transit Vehicle Manufacturer.

**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.

**Transit Vehicle Manufacturers (TVMs)** means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-product, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.
Transit Vehicle Manufacturers Goals for FTA recipients each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26.49.

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 Bidder shall provide all relevant information to enable the required reporting.

B. DBE Participation
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 Bidder to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Bidder 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 Bidder, and each Subcontract signed by the Successful Bidder 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 Bidder is the "contractor" awarded the contract.

SECTION III. REQUIRED OUTREACH EFFORTS

The Agency has implemented outreach requirements for this Contract. Specifically, Bidders 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. If a Bidder fails to conduct these Outreach Efforts or fails to submit the required documentation of Bidder's Outreach Efforts as indicated in Section IV, Parts A and B below, the Agency may determine that the Bidder is nonresponsive. A determination of non-responsiveness disqualifies Bidder from further consideration for the Contract award.

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SECTION IV. BID REQUIREMENTS

A. Documentation due at time of bid:
All required Outreach Efforts documentation due with the bid must be submitted in a separate sealed envelope with the bid submittal.

1. Form EO2 (Outreach Efforts)
Each Bidder shall submit Form EO2 with Columns A through D completed to document their diligent and earnest Outreach Efforts.

Each Bidder shall list in Form EO2 all Small Businesses contacted by Bidder in preparing its bid. Each Bidder shall also provide the following minimum information to document its Outreach Efforts. The DBE Compliance Specialist will consider this information to determine whether Bidder has demonstrated the required Outreach Efforts:

a. Column A - Small Business Name and Contact Information
Must list each business’s full legal name and contact information. Successful Bidder shall inquire to obtain the following: the number of its employees, number of years in business and its estimated range of annual gross receipts.

b. 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

c. Column C - Scope(s) of Work Solicited
List the 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.

d. 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 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 Bidder’s Representative
- Name of Company Contacted
- Name of Person Contacted
- Date and Time of Contact
- Details of the Communication

Each Bidder shall complete Columns A through D on Form EO2 in accordance with the following instructions:

1) Each Bidder shall actively contact Small Businesses for each scope of work or business opportunity selected for Outreach Efforts (Columns A and C).
2) Bidder’s contacts with Small Businesses should occur well before the deadline for the bid to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Contract.
3) Bidder shall ask each firm to indicate the number of its employees (Column A).
4) For each Small Business’s annual gross receipts, Bidder shall ask the firm to indicate the gross-receipts bracket into which it fits (e.g., less than $500,000; $500,000 – $1 million; $1 – 2 million; $2 – 5 million; etc.) rather than requesting an exact figure (Column A).

B. Documentation due within THREE (3) CALENDAR DAYS of the Bid Deadline

All required Outreach Efforts documentation is due within the three (3) calendar days of the bid deadline must be submitted in a sealed envelope.

1. Form EO2 (Outreach Efforts)
   Each Bidder shall submit Form EO2 with Columns E and F completed to document its diligent, earnest Outreach Efforts.

   a. Column E - Selection Decision
      Indicate the Successful Bidders selection decision for each small business that responded to the solicitation.

      If selected, indicate the Dollar Value.
      If not selected, provide an explanation why firm was NOT selected.

   b. Column F - Method of Communication of Final Selection Outcome
      The Successful Bidder 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, fax, letter, in person or a telephone log, etc. This documentation must show the following information regarding the final selection:

      - List the Selection Outcome
      - Name of Bidder’s Representative
      - Name of Company Contacted
      - Name of Person Contacted
      - Date and Time of Contact
      - Details of the Communication

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

2. Form EO2 Supporting Documentation
   Each Bidder shall complete and submit supporting documentation of its Outreach Efforts related to Form EO2 – as specifically related to Columns E & F.

   a. Within THREE (3) Calendar Days of the Bid Deadline, Bidder shall submit all supporting documentation of Bidder’s contacts with Small Businesses for each scope of work or business opportunity in regard to their Outreach Efforts.

   b. This documentation must include: (1) descriptions of scopes of work and business opportunities identified for Small Business participation, and (2) a copy of the actual solicitation sent to interested Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce.

   c. For all of the above documentation, if Bidder uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Bidder must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Bidder shall document the date and time of the call and the names of the respective persons representing Bidder and the Small Business.

   d. Bidder shall submit documentation that establishes how Bidder communicated its selection decisions and outcomes to each Small Businesses SELECTED OR NOT SELECTED for this Contract. This
documentation may be in the form of a letter, e-mail, or a telephone log and must show the name of the person contacted and date.

e. For all of the above documentation, if Bidder uses an email blast or fax format, the documentation submitted must include a copy of the e-mail or fax, and Bidder must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Bidder shall document the date and time of the call and the names of the respective persons representing Bidder and the Small Business.

3. **Form EO3 (Small Business Utilization Commitment)**

Due within THREE (3) CALENDAR DAYS of the Bid Deadline. Bidder shall complete, sign, date and submit Form EO3 within the three (3) calendar days of the bid deadline, EO3 commits Bidder to the Agency as follows:

a. The firms indicated as “Selected” on Form EO2 – Small Business Outreach Efforts will participate in the Contract;

b. Bidder will comply with the Race- and Gender-Neutral post-award requirements as stated in the DBE contract clause;

c. Any and all changes or substitutions will be authorized by the Compliance Specialist before implementation; and

d. The proposed total Small Business participation percentage is true and correct.

Bidder shall ensure that the dollar amount or percentages proposed for Small Business participation on Form EO2 equal the total percentage proposed in Form EO3.

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.

D. **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 Director**
**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 supporting documentation of this efforts at the time of bid. As the Disadvantaged Business Enterprise Liaison Officer (DBELO) for the City, The Equal Opportunity Director 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 VI. POST-AWARD COMPLIANCE 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 Bidder shall submit to Agency, through the B2G system, all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between Successful bidder and all subcontractors, upon execution throughout the life of this contract.

The Successful Bidder shall not terminate any approved DBE or Small Business Subcontracts, nor shall the Successful Bidder 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 Bidder fails to do so, the Agency may declare Successful Bidder in breach of contract.

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

B. Post-Award Relief from Small Business Requirements
After Contract award, the Agency will not grant relief from the proposed Small Business utilization except in extraordinary circumstances. The Successful Bidder’s request to modify Small Business participation must be in writing to the DBE Compliance Specialist, which has final discretion and authority to determine if the request should be granted.

The Successful Bidder’s waiver request must contain the amount of relief being sought, evidence demonstrating why the relief is necessary, and any additional relevant information the DBE Compliance Specialist should consider. The Successful Bidder shall include with the request all documentation of its attempts to subcontract with the Small Business and any other action taken to locate and solicit a replacement Small Business.

If an approved DBE allows its DBE status to expire or its DBE certification is removed 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 scopes of work negotiated after expiration or revocation of the DBE’s certification may be counted. Likewise, any work performed under a Contract extension granted by the Agency may not be counted as DBE participation.

C. 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.
• 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.

**D. Small Business Substitutions or Terminations**

As set forth in **49 CFR Section 26.53 (f)(1)(2)(3)** after Contract award, the Agency will not allow substitution or termination from the proposed Small Business utilization except in extraordinary circumstances. The Successful Bidder’s request to modify Small Business participation must be in writing to the Phoenix DBE Compliance Specialist.

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

If the Small Business was approved by the Agency, the Phoenix DBE Compliance Specialist will consider whether or not the Successful Bidder has exercised diligent and good-faith efforts to find another Small Business as a replacement. The Successful Bidder shall notify the Phoenix DBE Compliance Specialist in writing of the necessity to substitute a 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.

**E. Prompt Payment of Subcontractors**

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

Per A.R.S. § 32-1129.01 the Successful Bidder must promptly pay its subcontractors, subconsultants, or suppliers **within seven (7) calendar days**. If the Successful Bidder diverts any payment received for a DBE’s,
Small Business’s, 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 Bidder in breach of contract.

Under the prompt-payment provisions of 49 CFR Part 26, the Successful Bidder 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 Bidder for the work. The Successful Bidder 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 Bidder. If the Agency reduces the Successful Bidder’s retention, the Successful Bidder shall correspondingly reduce the retentions of Subcontractors and suppliers that have performed satisfactory work.

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

F. Remedies
If the Successful Bidder fails to comply with these contract provisions and the requirements set forth in 49 CFR 26.101 and 26.103, the Agency may take any one or more of the following actions:

1. Withhold future payments, including retention, until the Successful Submitter is determined to be in compliance;
2. Cancel the Contract
3. 

SECTION VII. RECORDS & REPORTING REQUIREMENTS

A. Records
During performance of the Contract, the Successful Bidder shall keep all records necessary to document Small Business participation. The Successful Bidder 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:

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; and
5. Copies of all payment documentation and Change Orders.

B. Reports
Successful Bidder is required to file the following payment reports in the B2G system:

1. **Progress Payments:**
   By the 15th of each month, the Successful Bidder 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 Bidder is responsible for ensuring that subcontractors confirm receipt of payment in the B2G system by the end of each month.

2. **Final Payment:**
   Before the Agency processes the Successful Bidder’s final payment and/or outstanding retention held against the Successful Bidder, the Successful Bidder shall note in the B2G system:
   a. The payment to each subcontractor is considered “Final”.
   b. Every subcontractor must confirm they have received full and “Final” payment in the B2G system.
c. For federal reporting purposes, Attachment E must be completed and signed by the Successful Bidder and DBE firm(s) prior to Successful Bidder receiving final payment.

The Successful Bidder is responsible for ensuring that subcontractors confirm the receipt of full and "Final" payment in the B2G system.
SUPPLEMENTARY CONDITIONS

1. STANDARD SPECIFICATIONS AND DETAILS

Except as otherwise required in these specifications, bid preparation and construction of this project will be in accordance with all applicable Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Uniform Standard Details, latest revision, and the City of Phoenix Supplements, latest revision to the MAG Uniform Standard Specifications and Details.

2. 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
4. The Plans
5. FAA, FHWA, FTA, Advisory Circulars, and other Federal Provision Documents.
6. COP Supplement to MAG Standard Specifications and Details, latest revision
7. MAG Standard Specifications and Details, latest revision

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

3. 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 will review payment request and make recommendation of approval or denial within 7 calendar days. The contractor will attach to each monthly pay application the following documents:

A. A completed and signed City of Phoenix Equal Opportunity Department DBE Utilization form.
B. All current certified pay roll reports and statement of compliance (to be completed through the date of the pay application).
C. Current record Drawings complete and current at the time of the monthly pay application. The contractor will review the most current Record Drawings with the Engineer at the time the payment application is submitted. If the Engineer determines that the Record Drawings are not complete, the Contractor will update the Record Drawings as directed, prior to re-submitting the monthly payment application.
D. Certified quantity calculation to justify all pay quantities and amounts requested.
E. A critical path method schedule monthly update report and compliance certificate.
F. Failure to provide all of the completed documents as listed above will result in the Engineer returning the monthly pay application to the Contractor with no action.

4. MAG SUBSECTION 105.15(B) FINAL ACCEPTANCE

Delete this subsection and substitute the following:

B. Substantial Completion
The work may be judged substantially complete when all construction 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 will have thirty (30) days thereafter to complete punch list work, unless additional time is granted—in writing—by the Engineer. In no case will 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.

C. 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 will withhold from the Contractor's final payment, an amount equal to at least twice the estimated cost of the remaining work. In addition, the Engineer will withhold the retention deducted from Contract progress payments until all punch list work has been satisfactorily completed, whereupon twice the amount of the actual cost of completing the work will be deducted from the Contractor's final payment and the remaining funds, if any, including the Contract retention, will be released in accordance with the conditions set forth in Contract retention.

D. Contract Retention

This project will not be considered complete until all work has been completed, including punch list work. Under no circumstances will 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 will 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.

5. INDEMNIFICATION OF CITY AGAINST LIABILITY
Contractor ("Indemnitor") must indemnify, defend, save, and hold harmless the City of Phoenix and its officers, agents and employees ("Indemnitee") from any and all claims, actions, liabilities, damages, losses or expenses, (including court costs, attorney’s fees and costs of claim processing, investigation and litigation) ("Claims") caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Contractor or any of its owners, officers, directors, agents, employees, or subcontractors in connection with this Contract. This indemnity includes any Claim or amount arising out of or recovered under workers’ compensation law or on account of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation, or court decree. Contractor must indemnify Indemnitee from and against any and all Claims, except those arising solely from Indemnitee’s own negligent or willful acts or omissions. Contractor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the City’s award of this Contract, Contractor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to this Contract. The obligations of Contractor under this provision survive the termination or expiration of this Contract.

6. CONTRACTOR'S INSURANCE REQUIREMENTS

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 of their obligations have been discharged, including any warranty periods under this Contract.

These insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum 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. Contractor is free to purchase such additional insurance as may be determined necessary.

A. Minimum 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 minimum liability requirements provided that the coverage is written on a “following form” basis.

1. Commercial General Liability – Occurrence Form
   Policy must include bodily injury, property damage, broad form contractual liability and XCU coverage.

<table>
<thead>
<tr>
<th>Aggregate</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Aggregate</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Products – Completed Operations</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Personal and Advertising Injury</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Each Occurrence</td>
<td>$5,000,000</td>
</tr>
</tbody>
</table>

   a. The policy must be endorsed to include the following additional insured language: "The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including completed operations”.

   b. Policy must not contain any restrictions of coverage with regard to operations on or near airport premises.

2. Automobile Liability

S.C. – 3

Revised 4/20
Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) $5,000,000

a. The policy must be endorsed to include the following additional insured language: “The City of Phoenix is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor”.

b. Policy must not contain any restrictions of coverage with regard to operations on or near airport premises.

3. Worker’s Compensation and Employers’ Liability

<table>
<thead>
<tr>
<th></th>
<th>Statutory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers’ Compensation</td>
<td></td>
</tr>
<tr>
<td>Employers’ Liability</td>
<td></td>
</tr>
<tr>
<td>Each Accident</td>
<td>$100,000</td>
</tr>
<tr>
<td>Disease – Each Employee</td>
<td>$100,000</td>
</tr>
<tr>
<td>Disease – Policy Limit</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

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.

B. Additional Insurance Requirements

The policies must include, or be endorsed to include, the following provisions:

1. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

2. The Contractor’s insurance coverage must be primary insurance and non-contributory with respect to all other available sources.

3. With regard to general liability, the City of Phoenix is named as an additional insured for both products completed operations and premises operations.

C. Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within two business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice will be sent directly to the City of Phoenix Contracts Specialist listed on Page I.F.B. - 1 of these specifications and will be sent by certified mail, return receipt requested.

D. 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 above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. 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 will be sent directly to the City of Phoenix Contracts Specialist listed on Page I.F.B. - 1 of these specifications. The City project number, contract number, and project description will be noted on the certificate of insurance. The City reserves the right to require complete, certified 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.**

F. Subcontractors

Contractor’s certificate(s) must include all subcontractors as additional insured under its policies or subcontractors must maintain separate insurance as determined by the Contractor, however, subcontractors limits of liability will not be less than $1,000,000 per occurrence / $2,000,000 aggregate.

G. Approval

Any modification or variation from the insurance requirements in this Contract must be made by the Law Department, whose decision is final. Such action will not require a formal Contract amendment, but may be made by administrative action.

H. Off-Duty Police Officer Requirements

It is required that the City provide off-duty police officers for construction projects as defined in the most recent edition of the City of Phoenix Traffic Barricade Manual. The Engineer must competitively procure Off Duty Police with vendors who are Authorized Traffic Coordinators with the City of Phoenix Police Department Off Duty Coordinator. 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.

3. Insurance Requirements:
   a. Commercial General Liability – Occurrence Form

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

      General Aggregate $5,000,000
b. Non-owned Auto Liability $5,000,000

Coverage must be provided if a City of Phoenix Police vehicle is being used in the performance of the off-duty traffic control services.

The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the use and operation of a City vehicle.

c. Worker's Compensation and Employers' Liability

<table>
<thead>
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</tr>
<tr>
<td>Disease – Policy Limit</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

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

4. For Aviation Department Projects:

Off Duty Police needs at Phoenix Sky Harbor International Airport (boundaries include 24th Street to 143 and Air Lane Road to Old Tower Road) require that the Officers:

- Must be City of Phoenix Police Officers with Phoenix Sky Harbor International Airport all areas badge – preference for Airport Bureau police officers
- Have experience working in active airport environment

For all other areas at Phoenix Sky Harbor International Airport and Phoenix Deer Valley Airport, it is requested that Off Duty City of Phoenix Police be given preference over others due to their familiarity with City of Phoenix laws and procedures.

7. PERFORMANCE AND LABOR MATERIAL BOND

Prior to the execution of the Contract, the successful bidder must provide a performance bond and a labor and materials bond, each in an amount equal to the full amount of the Contract. Each such bond will 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 Arizona Department of Insurance. A copy of the Certificate of Authority will accompany the bonds. The Certificate will have been issued or updated within two years prior to the execution of the Contract. The bonds will be made payable and acceptable to the City of Phoenix. The bonds will 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 by law required, and the bonds will have attached thereto a certified copy of Power of Attorney of the signing official. The Power of Attorney it will 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.

8. BONDING COMPANIES
All bonds submitted for this project will 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.

9. 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.”

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

A. 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;

B. 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

C. 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 will first notify the City as set forth in this section of the request or demand for the data. The Contractor or its subcontractors will 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 will promptly deliver, as set forth in this section, a copy of all data to the City. All data will 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 will be deemed to cause irreparable harm that justifies injunctive relief in court. Contractor agrees that the requirements of this Section will 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 protect 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 will 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 will be incorporated into all subcontracts entered into by Contractor. It is further agreed that a violation of this Section will 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 will survive the termination of this Contract.

11. **MATERIALS CONTAINING ASBESTOS**

Materials containing asbestos and/or lead in any form are unacceptable to incorporate into the project unless formally accepted in writing by the City of Phoenix. This written approval will take place prior to the material being incorporated into the project and/or brought to the site.

Repair kits or touch-up materials, materials that include asbestos and/or lead introduced into the product at the factory or applied at the assembly plant are all unacceptable. Any and all field-applied products that are comprised of asbestos and/or lead containing materials are also unacceptable.

If asbestos and/or lead are installed without written approval by City of Phoenix, the contractor will remove these materials at his expense and dispose of these materials in accordance with all state and federal laws and pay for the supervision and reporting costs in addition to the cost to properly remove them. The Contractor is required to submit MSDS documents for newly installed materials.

During construction, if the Contractor discovered or suspected any materials containing asbestos in the field, the Contractor will inform the City of Phoenix immediately, who will be in charge or removing and disposing of all asbestos containing materials.

12. **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:

A. If the City landfills are used, the Contractor will pay the normal dumping fee.

B. If private property within the City limits is used, the Contractor will 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 will be in strict conformance with the City of Phoenix Grading and Drainage Ordinance. The Contractor will obtain and pay for the necessary permit(s).

C. If the surplus material is disposed of outside the City limits, the Contractor will 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 will be incidental to the cost of the project.

13. **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 will:

A. Obtain a written (no fee) haul permit from the Planning and Development Department.

B. Obtain approval of the proposed haul route, number of trucks, etc., by the Street Transportation Department.

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

14. **DEFINITIONS – MAJOR ITEMS**

Section 101, page 8 of MAG Specifications – the definition of major item is changed to read:

**Major Item:** A major item is any bid item for work having an original dollar value equal to or greater than the amount shown below.

<table>
<thead>
<tr>
<th>Contract Amount</th>
<th>Major Item is defined as greater than the following</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to $1 million</td>
<td>$15,000 or 3%, whichever is greater</td>
</tr>
<tr>
<td>$1 million to $3 million</td>
<td>3% of the original Contract amount to a maximum of $75,000.00</td>
</tr>
<tr>
<td>$3 million to $5 million</td>
<td>2.5% of the original Contract amount to a maximum of $90,000.00</td>
</tr>
<tr>
<td>Over $5 million</td>
<td>1.5% of the original Contract amount to a maximum of $125,000.00</td>
</tr>
</tbody>
</table>

**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 will not increase more than twenty (20) percent without being subject to re-negotiation, regardless of the percentage of that item relative to the total Contract amount.

15. **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"), will 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 damage resulting from location of utility facilities.

The Contractor will 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 working days prior to commencing any excavation, the Contractor will 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.

16. **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 will 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 Documents 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 will include a similar provision in all of its contracts with subcontractors and suppliers providing services or supplying materials under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the subcontractors' and suppliers' records to verify the accuracy of cost and pricing data.

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 the above provision is not included in subcontractor and Supplier 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 Agreement, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor will be liable for reimbursement of the reasonable, actual cost of the audit.

17. **CHANGE ORDER REQUEST MARKUPS AND WORKSHEET**
The General Contractor will conform to the following markups for change order work self-performed or performed by a subcontractor. The General Contractor will also utilize the Change Order Request Summary Worksheet (see page S.C. – 15) to summarize change order costs. The General Contractor will still submit all required backup and supplemental information, calculations, invoices, etc., required to justify and support General Contractor and subcontractor costs.

A. **General Contractor Self-Performed Work and Subcontractor Work Markups**

   Overhead and Profit – The actual or approved costs for equipment, material, and labor will be marked up by 12%.

B. **General Contractor Markups of Subcontractor Work**

   The General Contractor will be allowed to markup actual or approved subcontractor costs for equipment, material, and labor (excluding subcontractor overhead and profit) by 7.5%.

C. **Bond**

   The General Contractor will be allowed to markup the cost for change order work for payment and performance bonds utilizing the same percentage used on the initial Contract and will submit verification of this percentage, from the bonding company, with the initial change order request.

D. **Insurance**

   The General Contractor will be allowed to markup the cost for change order work plus Bond costs for property damage/public liability insurance, utilizing the same percentage used on the initial contract. Verification, from insurance carriers, of this percentage will be submitted with the initial change order request.

E. **Sales Tax**

   The General Contractor will be allowed to markup the cost for change order work plus Bond and Insurance costs by the current, approved sales tax multiplier.

18. **CONTROL OF WORK**

   Add the following to Uniform Standard Specifications for Public Works Construction (MAG), Section 105.1 AUTHORIZATION OF THE ENGINEER:

   The City may, at its discretion and without cause, order the Contractor in writing to stop and suspend the Work. Immediately after receiving such notice, the Contractor will discontinue advancing the work specified under this Agreement. Such suspension will 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 its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of work by City.

19. **COMMENCEMENT, PROSECUTION AND PROGRESS**

   Add the following to Uniform Standard Specifications for Public Works Construction (MAG), Section 108.10 FORFEITURE AND DEFAULT OF CONTRACT:

   **City’s Right to Perform and Terminate for Cause:**
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 City, in addition to any other rights and remedies provided in the Contract Documents or by law, will 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 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 will not be entitled to receive any further payments under the Contract Documents until the Work will 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 will be obligated to pay the difference to City. Such costs and expense will include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys’ fees and expenses, incurred by City in connection with the re-procurement and defense of claims arising from Contractor’s default.

20. DUST CONTROL & PREVENTION

To facilitate and encourage strict compliance with the Maricopa County Air Pollution Control Regulations pertaining to fugitive dust control, Contractor will submit the following documentation to the Project Manager at the preconstruction 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 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, Contractor will designate and identify to the City an individual who has completed the dust control training set forth in Section 2 above as the site Dust Control Coordinator. The Dust Control Coordinator will 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 will designate an individual who has completed Basic Training to be on site at all times that earth moving or dust generating activities are occurring.

Contractor will notify the City of Phoenix, Aviation Department Project Manager 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 will likewise be transmitted to the Project Manager within twenty-four (24) hours.

The Contractor will prevent any dust nuisance due to construction operations in accordance with MAG Specifications, Section 104.1.3, Cleanup and Dust Control. The Contractor will 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 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 will clean the requested areas with a power pick-up broom.

No additional payment shall be made for the use of the power pick-up broom in the special requested areas only.

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. Contractor will remit payment of the reimbursable sum to the City within thirty (30) days of being presented with a demand for payment from the City.

21. LABOR COMPLIANCE

Davis Bacon and Related Acts. The prevailing basic hourly wage rates and fringes benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis Bacon Act, will be the minimum wages paid to the described classes of laborers and mechanics employed, or working on the site, to perform the Contract.

A Labor Standards Conference must be held prior to the start of construction. The Contractor will schedule the conference by calling the Labor Compliance Office at (602) 261-8287. Minimum attendance will be a corporate officer, who is authorized to execute and sign documents for the firm, and the payroll representative(s) responsible for preparing, reviewing and certifying weekly payroll reports. This requirement applies to all prime, sub and lower-tiered contractors expected to perform work on the project.

Payrolls, including subcontractor’s payrolls, must be submitted weekly no later than seven days after each pay period ending date. The Contractor will upon request, clarify discrepancies between hourly wages paid individual workers and the minimum hourly wages required by the applicable
federal wage decision for the project. Failure to provide payrolls or clarification of discrepancies may affect the timely release of payments and cause the withholding payment to the Contractor in accordance with Title 29, CFR Part 5.

29 CFR Parts 3, 5 and Wage Decision included in Labor Compliance (pages C.F.R. – 1 to 33 and G.W.D. – 1 to 6).

22. COMPLIANCE WITH FEDERAL LAWS

Contractor will comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on Contractor, a request for an amendment may be submitted. Contractor is also required to certify its compliance with specified laws and in some cases Contractor will pass along these requirements to its subcontractors. If any of Contractors certifications is found to be false, the City may terminate this Contract or impose other remedies due to the false certification. If there is a conflict in interpretation between provisions in this Contract and stated Federal Provisions, the Federal Provisions will prevail.
CHANGE ORDER REQUEST SUMMARY WORKSHEET

Project: **PSHIA TERMINAL 4 SOUTH 1 CONCRETE APRON**
Project No. AV08000083

1. Change Order Request Identification

2. Subcontractor Costs

<table>
<thead>
<tr>
<th>Company</th>
<th>Base Cost</th>
<th>+ 12% OH &amp; P</th>
<th>= Total</th>
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TOTAL (2A) (2B)

3. GC Markup of Subcontractor Base Costs (excluding OH & P)

TOTAL (2A) x 0.075 = (3A)

4. General Contractor Self-Performed Work

<table>
<thead>
<tr>
<th>Work Item</th>
<th>Base Cost</th>
<th>+ 12% OH &amp; P</th>
<th>= Total</th>
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TOTAL (4A)

5. Bond, Insurance, Sales Tax

(a) 2B + 3A + 4A = (5A)
(b) Bond Markup: (5A) x __________ = (5B)
(c) Insurance Markup: (5A + 5B) x __________ = (5C)
(d) Sales Tax Markup: (5A + 5B + 5C) x 0.05395 = (5D)
(e) Extended General Conditions (if applicable) = (5E)

TOTAL CHANGE ORDER REQUEST (5A + 5B + 5C + 5D + 5E) =

*Approved bond markup.  **Approved insurance markup
SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT AGREEMENTS

Definitions

1.1 "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, and/or Phoenix Goodyear Airport, according to the context of the contract.

1.2 "Contract" means all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions, and other documents, however denominated, that grant or convey a right or privilege on an Airport and to which this Exhibit is attached.

1.3 "Contractor" means all lessees, sublessees, licensees, permittees, consultants, concessionaires and other persons, firms, or corporations exercising a right or privilege on an Airport pursuant to a Contract and includes Contractor's heirs, personal representatives, successors, and assigns.

1.4 "Premises" means the area of an Airport occupied or used by Contractor pursuant to a Contract.

2. Federal Aviation Administration (FAA) Grant Assurances

2.1 Title VI of the Civil Rights Act of 1964 – Compliance with Nondiscrimination Requirements - 49 U.S.C. § 47123 and FAA Order 1400.11

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

A. Compliance with Regulations. Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as provided in Section 7 below), as it may be amended from time to time, which is incorporated herein by reference and made a part of this Contract.

B. Nondiscrimination. With regard to the work performed by it under this Contract, Contractor 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. Contractor will not participate, directly or indirectly, in the discrimination prohibited by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, including employment practices when this Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by 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 Contractor of Contractor's obligations under this Contract and the Title VI List of Pertinent Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

D. Information and Reports. The Contractor will provide all information and reports required by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, 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 City of Phoenix or the FAA to be pertinent to ascertain compliance with the Title VI List of Pertinent Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the City of Phoenix or the FAA, as appropriate, and will set forth what efforts Contractor has made to obtain the information.

E. Sanctions for Noncompliance. In the event of Contractor's noncompliance with
the nondiscrimination provisions of this Contract, the City of Phoenix will impose such Contract sanctions as it or the FAA may determine to be appropriate, including:

(i) Withholding payments to Contractor under this Contract until Contractor complies, and/or

(ii) Cancelling, terminating, or suspending this Contract, in whole or in part.

F. Covenant Running with the Land. Contractor for itself and its heirs, personal representatives, successors, and assigns, as a part of the consideration for this Contract, hereby covenants and agrees that, in the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (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. In the event of a breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to terminate this Contract and to enter, re-enter and repossess the property and facilities thereon and hold the same as if this Contract had never been made or issued.

G. Incorporation of Provisions. Contractor will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the City of Phoenix or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, Contractor may request the City of Phoenix to enter into any litigation to protect the interests of the City of Phoenix. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

2.2 General Civil Rights Provisions - 49 U.S.C. § 47123

A. Sponsor Contracts. Contractor agrees to comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision binds Contractor and subtier contractors from the bid solicitation period through the completion of this Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. Sponsor Lease Agreements and Transfer Agreements. Contractor agrees to comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance, including Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. If Contractor transfers its obligations to another, then the transferee is obligated in the same manner as Contractor. This provision obligates Contractor or its transferee for the period during which the property is owned, used, or possessed by Contractor and the City of Phoenix remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2.3 Economic Nondiscrimination - 49 U.S.C. § 47107
In any Contract under which a right or privilege on the Airport is granted to a Contractor to conduct or to engage in any aeronautical activity for furnishing services to the public, Contractor shall:

**A.** Furnish its services on a reasonable, and not unjustly discriminatory basis to all users of the Airport, and

**B.** Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith without liability therefor or, at the election of the City of Phoenix or the United States shall have the right to judicially enforce said requirement.

**2.4 Disadvantaged Business Enterprise Requirements - 49 C.F.R. Part 26**

**A. Contract Assurance (§ 26.13).** To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation regulations at 49 C.F.R. Part 26. Contractor or its subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by 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, which may include (i) withholding monthly progress payments, (ii) assessing sanctions, (iii) liquidated damages, and/or (iv) disqualifying Contractor from future bidding as non-responsible. Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further agreements.

**B. Prompt Payment (§ 26.29).** Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract not later than seven (7) days from the receipt of each payment Contractor receives from City of Phoenix. Contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the City of Phoenix. This clause applies to both DBE and non-DBE subcontractors.

**2.5 Airport Concessions Disadvantaged Business Enterprise Requirements - 49 C.F.R. Part 23**

**Contract Assurance (§ 23.9).** To the extent that this Contract is a concession agreement covered by 49 C.F.R. Part 23, Contractor agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 C.F.R. Part 23. Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23 that it enters into and cause those businesses to similarly include the statements in further agreements.

**2.6 Miscellaneous**

**A.** Contractor agrees that it will undertake an affirmative action plan in conformance with 14 C.F.R. Part 152, Subpart E (Nondiscrimination in Airport Aid Program), to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment, contracting, or leasing activities covered in 14 C.F.R. Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E.
B. City of Phoenix reserves the right to further develop, improve, repair, and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxiways, as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations, and additions.

C. The City of Phoenix reserves the right, but is not obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.

D. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation, or maintenance of the Airport. If the FAA or its successors require modifications or changes in the Contract as a condition to obtaining funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications and changes as part of this Contract.

E. This Contract is subordinate to the reserved right of the City of Phoenix and its successors and assigns to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight includes the right to cause in the airspace any noise inherent in the operation of any aircraft through the airspace or in landing at, taking off from, or operating at an Airport.

F. Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.

G. Contractor, by accepting this Contract, covenants for itself and its successors and assigns, that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to air navigation. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and abate the interference at Contractor's expense.

H. Contractor agrees that nothing in this Contract may be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) (No exclusive rights at certain facilities).

I. This Contract is subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation, and taking-over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

J. If this Contract involves construction, Contractor shall carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications current on the date of project approval.

K. Contractor is encouraged to use fuel and energy conservation

   Contractor agrees that IRCA (Public Law 99-603) applies to it. Contractor shall comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify its compliance.

4. **Conflict of Interest**

   See Section VII General Conditions, Item 17.

5. **Legal Worker Requirements**

   See Section VII General Conditions, Item 3.

6. **City of Phoenix Equal Employment Opportunity Requirement**

   See Section VII General Conditions, Item 26.

7. **Title VI List of Pertinent Nondiscrimination Acts and Authorities**

   During the performance of this Contract, Contractor agrees to comply with all federal, state, and local nondiscrimination laws, rules, and regulation, including the following:

   A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (prohibits discrimination on the basis of race, color, or national origin).

   B. 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964).

   C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §§ 4601, et seq.) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal aid programs and projects).


   F. The Civil Rights Restoration Act of 1987 (Public Law 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 the programs or activities are federally funded or not).

   G. Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, et seq.), 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 as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Part 37 (Transportation Services for Individual with Disabilities) and Part 38 (Americans with Disabilities Act Accessibility Specification for Transportation Vehicles).
H. Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which ensures nondiscrimination 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.

I. Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency) and resulting agency guidance and 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).

J. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, et seq.), as amended, which prohibits you from discriminating because of sex in education programs or activities.
EXHIBIT A
CONTRACTOR COMPLIANCE WITH ENVIRONMENTAL LAWS
AT PHOENIX AIRPORTS

Contractor shall, at Contractor’s own expense, comply with all present and subsequently enacted Environmental Laws, and any amendments thereto, affecting Contractor’s occupation and use of the Premises.

1. DEFINITIONS

1.1 “Environmental Laws” means those laws promulgated for the protection of human health or the environment, including but not limited to, the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA], 42 U.S.C. Sections 9601 et seq., as amended by the Superfund Amendment and Reauthorization Act [SARA]; the Solid Waste Disposal Act [SWDA], 42 U.S.C. Sections 6901 et seq., as amended by the Resource Conservation and Recovery Act [RCRA] including Subtitle I, Underground Storage Tanks; the Toxic Substances Control Act [TSCA], 15 U.S.C. Sections 2601 et seq.; the Public Health Service Act (Title XIV) [PHSA] a.k.a. the Safe Drinking Water Act [SDWA] and SDWA Amendments of 1996, 42 U.S.C. Sections 300f et seq.; the Federal Water Pollution Control Act [FWPCA], as amended by the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; Title 49 of the Arizona Revised Statutes, including the Arizona Environmental Quality Act, A.R.S. Sections 49-101 et seq.; the Arizona Comprehensive Air Quality Act, A.R.S. Sections 49-401 et seq.; the Arizona Solid Waste Management Act, A.R.S. Section 49-701 et seq.; the Arizona Hazardous Waste Management Act, A.R.S. Sections 49-901 et seq.; the Arizona Underground Storage Tank Regulation Act, A.R.S. Sections 49-1001 et seq.; the Occupational Safety and Health Act of 1970 as amended, 29 U.S.C. Sections 651-678 and the regulations promulgated thereunder, and, any other laws, regulations and ordinances (whether enacted by local, state or federal government) now in effect or hereafter enacted, that provide for the regulation or protection of human health or the environment, including the ambient air, ground water, surface water, and land use, including substrata soils.

1.2 In this Contract, the term “regulated substances” means:

- Those substances identified or listed as a hazardous substance, pollutant, hazardous material, and, petroleum, in CERCLA/SARA; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101 et seq.; RCRA, Subtitle I, Regulation of Underground Storage Tanks, 42 U.S.C. Sections 6991 through 6991i; Clean Air Act, 42 U.S.C. Section 7412 et seq.; and in any rule or regulation adopted to implement said statutes.

- Those substances identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a hazardous, special, or solid waste in the Arizona Environmental Quality Act, A.R.S. Sections 49-101 et seq., including but not limited to, the Water Quality Assurance Revolving Fund Act [WQARF], A.R.S. Sections 49-281 et seq.; the Arizona Comprehensive Air Quality Act, A.R.S. Sections 49-401 et seq.; the Arizona Solid Waste Management Act, A.R.S. Sections 49-701 et seq.; the Arizona Underground Storage Tank Regulation Act, A.R.S. Sections 49-1001 et seq.; A.R.S. Sections 49-851 through 49-868 pertaining to Management of Special Waste; the Arizona Hazardous Waste Management Act, A.R.S. Sections 49-921 et seq.; and in any rule or regulation adopted to implement said statutes.

- All substances, materials and wastes that are, or that become, regulated, or that otherwise are classified as hazardous or toxic, under any Environmental Law during the term of this Contract.
1.3 The term “release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

1.4 As used herein, the term “Premises” means Contractor’s leasehold and/or any part or portion of Phoenix Sky Harbor International Airport (PSHIA), Phoenix Deer Valley Airport (DVT), Phoenix Goodyear Airport (GYR) or City owned property where Contractor or its employees or agents causes to occur a release of a regulated substance.

1.5 As used herein, the term “Contractor” means every Contractor, lessee, sublessee, licensee, permittee, concessionaire, tenant or other person, firm or corporation occupying or using the Premises pursuant to an agreement and includes Contractor’s heirs, personal representatives, successors-in-interest and assigns.

2. COMPLIANCE

2.1 Contractor shall not cause or permit any regulated substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises, or transported to or from the Premises, by Contractor, its agents, employees, Contractor’s invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

Contractor may provide for the treatment of certain discharges regulated under the City of Phoenix pretreatment ordinances pursuant to Chapter 28 of the Phoenix City Code or such other ordinances as may be promulgated and the Federal Clean Water Act, 33 U.S.C. Section 1251 et seq.

2.2 If the release by Contractor of any regulated substance on or under the Premises, or to the air, groundwater or surface waters on or adjacent to the Premises results in any contamination of the Premises, air, groundwater or surface waters, Contractor shall promptly take all actions at its sole cost and expense that are necessary to mitigate any immediate threat to human health or the environment. Contractor shall then undertake any further action necessary to return the contaminated site to the condition existing prior to the introduction by Contractor of any regulated substance; provided that City’s approval of such actions shall first be obtained. Contractor shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by Contractor shall not be construed to impair Contractor’s rights, if any, to seek contribution or indemnity from another person.

2.3 Contractor shall, at Contractor’s own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Contractor’s occupancy or use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or remediation plan that may be necessary due to any actual or potential spills or discharges of regulated substances on, under or from the Premises, or to the air, groundwater or surface waters on or adjacent to the Premises during the term of this Contract. At no cost or expense to City, Contractor shall promptly provide all information requested by City pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, City shall have the right to inspect, within 10 days of Contractor’s receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets and legally privileged documents, regarding environmental conditions relating to the use, storage, or treatment of regulated substances by Contractor on, under or from the Premises or to the air, groundwater or surface waters on or adjacent to the Premises.

2.4 Contractor shall notify the Aviation Director within 24 hours upon learning of the following:
• Any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Contractor’s occupancy or use of the Premises;

• Any change in Contractor’s activities on the Premises that will change or have the potential to change Contractor’s or City’s obligations or liabilities under Environmental Laws;

• Any assertion of a claim or other occurrence for which Contractor may incur an obligation under this Section.

2.5 Contractor shall at its own expense obtain and comply with any permits or approvals that are required or may become required as result of any occupancy or use of the Premises by Contractor, its agents, employees, invitees and assigns.

2.6 Contractor shall insert the provisions of this Exhibit in any agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Contract.

2.7 Contractor shall obtain and maintain compliance with any applicable financial responsibility requirements of federal, state and/or local law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a regulated substance and present evidence thereof to the City, as may be applicable.

2.8 Contractor shall take reasonable precautions to prevent other persons not acting under Contractor’s authority from conducting any activity that would result in the release of a regulated substance on, under or from the Premises or to the air, groundwater or surface waters on or adjacent to the Premises. Contractor shall also exercise due care with respect to any regulated substance that may come to be located on the Premises as a result of the actions of third parties who are not under Contractor’s authority.

2.9 Contractor shall make its best efforts to minimize its production of a waste stream that includes regulated substances, and shall minimize the storage of regulated substances on, in and around the Premises.

3. TERMINATION OF AGREEMENT

Contractor’s failure or the failure of its agents, employees, Contractors, invitees or of a third party to comply with any of the requirements and obligations of this Exhibit or applicable Environmental Law shall constitute a material breach of this Contract and shall permit the City to pursue the following remedies, in addition to all other rights and remedies provided by law or otherwise provided for in this Contract, to which the City may resort cumulatively, or in the alternative:

3.1 The City of Phoenix may, at the City’s election, keep this Contract in effect and enforce all of its rights and remedies under the Contract, including (1) the right to recover rent and other sums as they become due by appropriate legal action and/or (2) the right, upon 10 day’s written notice to Contractor, to make payments required of Contractor or perform Contractor’s obligations and be reimbursed by Contractor for the cost thereof, unless such payment is made or obligation performed by Contractor within such 10 day period.

3.2 The City of Phoenix may, at the City’s election, terminate this Contract upon written notice to Contractor. Upon the City’s termination, Contractor shall immediately pay to the City an amount equal to all accrued but unpaid rents plus interest thereon calculated from the date the rent is past due at a rate equal to: (1) 18% per annum or (2) the maximum interest rate permitted by state law, whichever is greater.

3.3 Notwithstanding any other provision in this Contract to the contrary, the City shall have the right of “self-help” or similar remedy in order to minimize any damages, expenses, penalties
and related fees or costs, arising from or related to a violation of Environmental Laws on, under or from the Premises or in surface waters on or adjacent to the Premises, without waiving any of its rights under this Contract.

3.4 The exercise by the City of any of its rights under Section C of this Exhibit shall not release Contractor from any obligation it would otherwise have under this Exhibit.

3.5 The covenants of this Exhibit shall survive the termination of this Contract.

4. AZPDES STORMWATER GENERAL PERMIT COMPLIANCE SUPPLEMENT

Contractor shall also comply with the attached AZPDES Stormwater General Permit Compliance Supplement to this Exhibit as if the Supplement is fully set forth herein.
EXHIBIT B
SUPPLEMENT TO EXHIBIT A

AZPDES STORMWATER GENERAL PERMIT COMPLIANCE

With the exception of discharges on Indian Country, stormwater discharges in Arizona are regulated by the Arizona Department of Environmental Quality through the Arizona Pollutant Discharge Elimination System (AZPDES) program. An AZPDES permit is required for any point source discharge of pollutants to waters of the United States. Because stormwater runoff can transport pollutants to either a municipal separate storm sewer system (MS4) or to waters of the United States, AZPDES permits are required for stormwater discharges.

The City of Phoenix (the “City”) and its Contractors are required to obtain AZPDES permit coverage to the extent that stormwater is discharged from the Premises. Coverage under the AZPDES General Permit for Discharges from Construction Activities to Waters of the United States (AZG2008-001) (“AZPDES Construction General Permit”) is required for stormwater discharges generated by construction activities. Coverage under the AZPDES General Permit for Stormwater Discharges Associated with Industrial Activity from Non-Mining Facilities to Waters of the United States (AZMSG2010-002) (“AZPDES Multi-Sector General Permit”) is required for stormwater discharges generated by facilities and operations engaged in certain industrial activities. Among these industries are those engaged in “air transportation” and associated activities.

The City has obtained coverage under the AZPDES Multi-Sector General Permit for its “air transportation” facilities at Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport and Phoenix Goodyear Airport (collectively hereinafter referred to as the “Airports”). The City has adopted a Stormwater Quality Protection ordinance, Phoenix City Code Ch. 32C, and has in place an “Aviation Department Stormwater Enforcement Procedures and Civil Penalty Policy” (“Aviation Stormwater Policy”), both of which were developed to comply with federal and local laws governing stormwater pollution.

Compliance Generally

The City adopted the Aviation Stormwater Policy to achieve compliance with the AZPDES program requirements by the Aviation Department, its contractors and permittees. Contractor is subject to the policy as a condition of its activities, operations, and location at the Airports. The City shall have the right to monitor and require compliance with the Aviation Stormwater Policy.

Contractor agrees to comply with the Aviation Stormwater Policy and to implement at its sole expense, unless otherwise agreed to in writing between City and Contractor, those requirements of the Airports' Stormwater Pollution Prevention Plans (SWPPP) and City ordinances that pertain to its operations and activities on the Premises at the Airports. Contractor warrants that it will use its best efforts to meet all deadlines that are established by statute, regulation, ordinance, and the Aviation Stormwater Policy, or that are agreed to by the parties. Contractor acknowledges that time is of the essence in the implementation of all City Permit requirements.

Full compliance with the AZPDES Permit Program as contained in 18 A.A.C. 9, Art. 9; Chapter 32(C) of the Phoenix City Code; and the Aviation Stormwater Policy is a material condition of this Contract, and for any breach thereof which exposes City to civil or criminal fine, penalty, sanction or remediation cost by any governmental entity, City may terminate this Contract. This remedy is in addition to any other remedies available to the City.

AZPDES Construction General Permit

If Contractor elects to perform construction activities at the Airports, Contractor is required, prior to commencing those construction activities, to obtain stormwater discharge authorization from ADEQ under an AZPDES Construction General Permit. Contractor will obtain that authorization by preparing a SWPPP and filing for AZPDES Construction General Permit coverage in coordination with the City’s project manager. The City will consult with and assist Contractor with regard to the filing for AZPDES
Construction General Permit coverage as time and personnel allow. Contractor will also work with the City’s project manager to develop pollution controls (e.g., Best Management Practices, Control Measures, schedules and procedures) for the SWPPP. Contractor is solely responsible for implementation of the pollution controls, all related costs and compliance with its AZPDES Construction General Permit obligations.

AZPDES Multi-Sector General Permit

Contractor is required, prior to commencing its operations and activities at the Airports, to obtain stormwater discharge authorization from the ADEQ under an AZPDES Multi-Sector General Permit. Contractor will obtain that authorization as a “Co-Permittee” with the City. As a Co-Permittee, the Contractor agrees to:

a. Provide the City with a copy of Contractor’s written Authorization to Discharge to the extent Contractor has received such from the Arizona Department of Environmental Quality; and

b. Implement the Airports’ SWPPP, including Best Management Practices, Control Measures, schedules, and procedures, as applicable to the Contractor’s operations.

In connection with its coverage under the AZPDES Multi-Sector General Permit, the City has developed a SWPPP for the Airports to minimize the contact of storm and other precipitation event water with "significant materials" (as defined in the Regulations and City Ordinances) generated, stored, handled or otherwise used on Airport facilities. The City shall provide a copy of the SWPPP, including Best Management Practices, Control Measures, schedules, and procedures to Contractor, and Contractor shall implement that portion of the SWPPP applicable to its activities.

The City agrees that, to the extent allowed by law, Contractor shall have the right to be removed as a Co-Permittee from coverage under the AZPDES Multi-Sector General Permit should its Contract be canceled or terminated for other reasons, or due to Contractor’s relocation, noncompliance with the AZPDES Multi-Sector General Permit requirements or Contractor’s exercise of choice. In no event shall Contractor be relieved of its obligation to comply with the requirements of the AZPDES permit program with regard to its occupation and use of the Premises at the Airports, nor shall Contractor be excused from any obligations or indemnifications incurred and owed to City prior to Contractor’s removal as a Co-Permittee that result from a failure of Contractor to fulfill an obligation of a Co-Permittee.

Pollution Controls

City reserves the right to impose upon Contractor any Best Management Practices, Control Measures, schedules, and procedures, other action necessary to ensure City’s ability to comply with its AZPDES program requirements or applicable City ordinances; however, except in "extreme emergency" conditions, Contractor shall have 10 days from date of receipt of written notice imposing such pollution control measures or other requirements to notify City in writing if it objects to any action it is being directed to undertake. If Contractor does not provide the specified timely notice, it will be deemed to have assented to implementation of the pollution control measures or other requirements. If Contractor provides City with timely written notice of its objections, the parties agree to negotiate a prompt resolution of their differences. Contractor warrants that it will not serve a written notice of objections for purposes of delay or avoiding compliance.

As used herein, "extreme emergency conditions" means:

a. Conditions that impose an immediate impact on waters of the United States (e.g., Salt River) resulting from an emergency situation such as fire, spill, release or explosion, such that the facility responsible for the release must immediately begin appropriate response activities independently of City’s direction or oversight;

b. An emergency such that a facility has to close because of a catastrophic event, where the facility can extend the 10 day notice period, but must implement pollution control measures before it reopens;
c. A collapse of the storm sewer system or other event which forecloses the Airports and/or City from performing its obligations under the City Permit due to lack of capacity.

Covenant of Good Faith

City and Contractor covenant to act in good faith to implement any AZPDES program requirements imposed on them pursuant to 18 A.A.C. 9, Art. 9. City and Contractor acknowledge that close cooperation will be necessary to ensure compliance with any AZPDES Multi-Sector General Permit requirements to promote safety and minimize costs, and each party agrees to a candid exchange of information necessary to coordinate a stormwater management and monitoring plan.

Indemnification

The covenants of insurance and indemnification in favor of City imposed by other provisions of the Contract shall extend to, and are incorporated into, the provisions of this Supplement to Exhibit A.
SPECIAL PROVISIONS
SKY HARBOR INTERNATIONAL AIRPORT

1.7 Disposal of Surplus Material

1.7.1 All surplus and/or waste material must be disposed of off the Airport property at the Contractor’s discretion, subject to the following conditions:

1.7.2 If the City landfills are used, the Contractor will pay the normal dumping fee.

1.7.3 If private property within the City limits is used, the Contractor will obtain written permission from the property owner and deliver a copy of this agreement to the City prior to any hauling dumping. If the surplus material is disposed of outside City limits, the Contractor will comply with all applicable laws/ordinances of the agency concerned and be responsible for all costs incurred.

1.8 Contractor’s Parking

1.8.1 The Contractor’s employees will not be permitted to park their personal vehicles in the Airport parking garages or other parking areas intended for passenger and other airport users.

1.8.2 A limited number of parking cards will be made available for the Contractor to purchase and use. These parking cards will be paid for on a monthly basis and are available at the sole discretion of the Aviation Parking Coordinator.

1.9 Agreement Contingency, Allowance, and Owner Controlled Funds

1.9.1 A General Contingency Allowance is provided for the purpose of encumbering funds to cover possible additional work. The amount of the allowance item is determined by the Project Manager and is not subjected to individual bid pricing. All bidders will incorporate the amount pre-entered in the bid proposal and will reflect the same in the total amount bid for this Project. This allowance item provides estimated funding to cover unforeseen conditions that may be encountered and correspond to extra work needed to complete the project per plan. Unforeseen extra work, if any, will be approved by the Project Manager.

1.9.2 It will be understood that this allowance is an estimate only and is based on the history of similar projects. It will not be utilized without the Project Manager’s approval. It is further understood that authorized extra work, if any, may be less than the allowance item.

1.10 Site Security

1.10.1 The Contractor will contact the Airport Security Coordinator (602) 273-2036 fifteen (15) calendar days before the start of construction to submit the necessary airport security information for all vehicles and personnel that will be required inside the airport security fence during construction. Vehicle logo requirements (including vehicles with magnetic company logos) and current registration vehicle tags also apply. The Contractor will also be required to submit a letter of verification received from the City, or the City sponsor, identifying the Contractor, its involvement in the project, and length of time of Agreement. New company information manual can be provided to the Contractor prior to submission of paperwork so that all paperwork is ready. This New Company Information Manual can be obtained in the Security Badging Office.

1.11 Vehicle Traffic Regulations (including vehicles with magnetic company logos)

1.11.1 The following will be considered major streets: AIR LANE (north of ARFF No. 29) and SKY HARBOR BLVD. (north of ARFF No. 19)

1.11.2 All traffic and/or traffic control devices on this project will be provided, maintained and/or controlled as specified in the City of Phoenix Traffic Barricade Manual MUTCD, latest revision.
1.11.3 Permission to restrict City streets will be requested as specified in Section III of the Traffic Barricade Manual.

1.11.4 Unless otherwise provided in the following “Aircraft Traffic Regulations,” all traffic on this Project will be regulated as specified in Section IV of the Traffic Barricade Manual. Non-peak hours at Phoenix Sky Harbor International Airport are 11:00 p.m. to 5:00 a.m. for lane restrictions. Contractor needs to coordinate closely with Aviation airside operation.

1.11.5 No deviation to the “Aircraft Traffic Regulations” will be allowed or implemented unless submitted to the City for review and approval two (2) weeks prior to proposed Work.

1.11.6 The Contractor will submit Traffic Control Plans to the Engineer for approval for all work affecting City Streets.

1.12 Aircraft Traffic Regulations

1.12.1 Special Regulations for Aircraft Traffic: Aircraft traffic will continue to use existing runways, aprons, and taxiways of the Airport during the times that work under this contract is being performed. The Contractor will at all times so conduct his work as to create no hindrance, hazard, or obstacle to aircraft using the airport, and must, at all times, conduct the work in conformance with the requirements of the Airport Director, and FAA Control Tower, or their authorized representative.

1.12.2 Proposed haul routes across aircraft movement areas will require controlled crossings with radio equipped flagmen at each side of the controlled crossing, in accordance with Aviation Department details and requirements.

1.13 Asbestos/Lead Based Paint Identification and Remediation

1.13.1 Asbestos and lead based paint identification and/or remediation will be performed by the City of Phoenix unless otherwise indicated by an authorized City of Phoenix representative. Prior to starting Work, the Contractor should obtain a copy of the asbestos and lead based paint survey of the affected area, and contact the City of Phoenix Aviation Environmental Division Manager prior to the disturbance of any building materials that contain or potentially contain asbestos or lead based paint. Building materials that could potentially contain asbestos include any materials that are not wood, metal or glass. Any building materials that will be disturbed during renovation or demolition projects that have not been previously inspected will be inspected by an Asbestos Hazard Emergency Response Act (AHERA) certified building inspector approved by the City of Phoenix. Any asbestos and lead based paint remediation activities will be conducted by contractors licensed to perform asbestos and lead based paint remedial activities and will be approved by the City of Phoenix. All asbestos and lead based paint inspection and remedial work will be performed in compliance with all applicable local, state and federal regulations regarding asbestos, lead based paint and general construction.
# EXHIBIT C – FEDERAL CONTRACT PROVISIONS
## FOR AIRPORT IMPROVEMENT PROGRAM CONSTRUCTION PROJECTS

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Please Note: Attachments are located at end of this Submittals Section.
ADDITIONAL FEDERAL CONTRACT PROVISIONS FOR
AIRPORT IMPROVEMENT PROGRAM CONSTRUCTION PROJECTS

The Contractor is required to comply with all of the following federal contract provisions as applicable to this Contract.

I. BUY AMERICAN PREFERENCE, 49 U.S.C. § 50101

See Attachment 1.

The contractor agrees to comply with 49 U.S.C. § 50101, which provides that federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

A bidder or offeror must complete and submit the appropriate Buy American certification included below with their bid or offer. The City will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.

Type of Certification is based on Type of Project

There are two types of Buy American certifications:

1. Projects for a facility (buildings, such as terminals, for snow removal equipment, for aircraft rescue and firefighting operations, etc.). The Certificate of Compliance Based on Total Facility must be submitted.

2. Projects for non-facility development (non-building construction projects, such as runway or roadway construction, equipment acquisition projects, etc.). The Certificate of Compliance Based on Equipment and Materials Used on the Project must be submitted.

II. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 – Compliance with Nondiscrimination Requirements – 49 U.S.C. § 47123 and FAA Order 1400.11

Title VI Solicitation Notice. The City, 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 and offerors that it will affirmatively ensure that, in 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.

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as Contractor) agrees as follows:

1. Compliance with Regulations. The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are incorporated herein by reference and made a part of this Contract.

2. Nondiscrimination. The Contractor, with regard to the work performed by it during the Contract, shall 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 shall not participate either directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. 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 shall be notified by the Contractor of the Contractor's obligations under this Contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports.** The Contractor will provide all information and reports required by the Nondiscrimination Acts and Authorities, and directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities 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 City or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City will impose such Contract sanctions as it or the FAA may determine to be appropriate, including:

   - (1) Withholding payments to the Contractor under the Contract until the Contractor complies and/or
   - (2) Cancelling, terminating, or suspending the Contract, in whole or in part.

6. **Incorporation of Provisions.** The Contractor will include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the City or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, 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 City to enter into any litigation to protect the interests of the City. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

### III. GENERAL CIVIL RIGHTS PROVISIONS -- 49 U.S.C. § 47123

1. **Sponsor Contracts.** The Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance.

   This provision binds the Contractor and subtier contractors from the bid solicitation period through the completion of the Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

2. **Sponsor Lease Agreements and Transfer Agreements.** The Contractor, tenant, concessionaire, or lessee agree to comply with pertinent statutes, Executive Orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance. If the Contractor, tenant, concessionaire, or lessee transfers its obligations to another, the transferee is obligated in the same manner as the Contractor, tenant, concessionaire, or lessee.

   This provision obligates the Contractor, tenant, concessionaire, or lessee or its transferee for the period during which the property is owned, used, possessed by the Contractor, tenant, concessionaire, or lessee and the City remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

See Attachment 2.


The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the City, the FAA, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the Contractor that are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor agrees to maintain all books, records, and reports required under this Contract for a period of not less than three years after final payment is made and all pending matters are closed.

VI. DISADVANTAGED BUSINESS ENTERPRISES – 49 C.F.R. Part 26

See Section D.B.E.C. – 1 to 6

VII. ENERGY CONSERVATION REQUIREMENTS – 2 C.F.R. Part 200, Appx. II(H)

The Contractor and its subcontractors shall comply with the mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6201-6422.

VIII. BREACH OF CONTRACT TERMS – 2 C.F.R. Part 200, Appx. II(A)

Any violation or breach of the terms of this Contract by the Contractor or its subcontractors may result in the suspension or termination of this Contract or such other action that may be necessary to enforce the rights of the parties of this Contract.

The City will provide the Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of this Contract. The City reserves the right to withhold payments to the Contractor until such time as the Contractor corrects the breach or the City elects to terminate this Contract. The City’s notice will identify a specific date by which the Contractor must correct the breach. The City may proceed with termination of this Contract if the Contractor fails to correct the breach by the deadline indicated in the City’s notice.

The duties and obligations imposed by this Contract and the rights and remedies available hereunder are in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.

IX. RIGHT TO INVENTIONS – 2 C.F.R. Part 200, Appx. II(F) and 37 C.F.R. § 401

If this Contract includes the performance of experimental, developmental, or research work, then this Contract provides for the rights of the United States and the City in any resulting inventions, as established by 37 C.F.R. Part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This Contract incorporates by this reference the patent and inventions rights as specified in 37 C.F.R. § 401.14. The Contractor shall include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

See Attachment 3.

See Attachment 4.

XI. RESTRICTIONS ON FEDERAL PUBLIC WORK PROJECTS – 49 C.F.R. § 30.15

See Attachment 5.

XII. VETERAN’S PREFERENCE – 49 U.S.C. § 47112

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined in 49 U.S.C. § 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.


See Section G.W.D. – 1 to 6

XIV. DAVIS BACON LABOR STANDARDS PROVISIONS – 29 C.F.R. PART 3 and PART 5 AND 2 C.F.R. § 200, Appx. II(D)

Parts 3 and 5 are incorporated in this Contract as follows See Section C.F.R. – 1 to 33

XV. EQUAL OPPORTUNITY CLAUSE – 41 C.F.R. §§ 60-1.4 and 60-4.3

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

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto,
and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedure authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provision, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

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 (OFCCP), U.S. 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:
      (1) Black (all) persons having origins in any of the Black African racial groups not of Hispanic origin);
      (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race);
      (3) 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
      (4) 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 C.F.R. § 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 shall 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 timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p 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. Covered construction contractors performing construction work in a geographical area where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

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 shall be employed by the Contractor during the training period and the Contractor shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall 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 onsite 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 therefore 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 female 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 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 C.F.R. 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 obligations 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.
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.

Conduct a review, at least annually, of all supervisors’ adherence to and performance under the Contractor’s EEO policies and affirmative action obligations.

Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community, or other similar groups of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p 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.

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, if the 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.

The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

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.

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 C.F.R. § 60-4.8.

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 number, 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.

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).

XVI. **PROHIBITION OF SEGREGATED FACILITIES – 41 C.F.R. § 60-1.8**

1. The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that is does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this provision is a violation of the Equal Opportunity provision in this Contract.

2. “Segregated facilities,” as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

3. The Contractor shall include this provision in every subcontract and purchase order that is subject to the Equal Opportunity provision of this Contract.

See [Attachment 7](#).

XVII. **NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION – 41 C.F.R. § 60-4.2 and Executive Order 11246**

1. The offeror's or bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

   **Timetables**

   Goals for minority participation for each trade: 0%
   Goals for female participation in each trade: 0%

   These goals are applicable to all of the Contractor's construction work (whether or not it is federal or federally-assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 C.F.R. 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 C.F.R. 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training shall 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 C.F.R. Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in
excess of $10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this notice and in the Contract resulting from this solicitation, the "covered area" is Arizona, Maricopa County, and City of Phoenix.

XVIII. BLANK

XIX. TERMINATION OF CONTRACT – 2 C.F.R. § 200, Appendix II(B) and FAA Circular 150/5370-10, § 80-09

Termination for Convenience (Construction and Equipment Contracts)

The City may terminate this Contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of the City. Upon receipt of a written notice of termination, except as explicitly directed by the City, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified the written notice.

2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.

3. Discontinue orders for materials and services, except as directed by the written notice.

4. Deliver to the City all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment, and materials acquired prior to termination of the work and as directed in the written notice.

5. Complete performance of the work not terminated by the notice.

6. Take action, as directed by the City, to protect and preserve property and work related to this Contract that the City will take possession of.

The City agrees to pay Contractor for:

1. Completed and acceptable work executed in accordance with the Contract documents prior to the effective date of termination;

2. Documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the Contract documents in connection with uncompleted work;

3. Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with subcontractors and suppliers; and

4. Reasonable and substantiated expenses to the Contractor directly attributable to the City’s termination action.

The City will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the City’s termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this Contract.
Termination for Default (Construction)

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes conditions, rights, and remedies associated with the City’s termination of this Contract due to the default of the Contractor.

XX. DEBARMENT AND SUSPENSION – 2 C.F.R. Parts 180 and 1200 and DOT Order 4200.5

Certification of Bidder or Offeror Regarding Debarment

By submitting a bid or proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any federal department or agency from participation in this transaction.

Certification of Lower Tier Contractors Regarding Debarment

The successful bidder, by administering each lower tier subcontract that exceeds $25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally assisted project. The successful bidder will accomplish this by:


2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.

3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the FAA later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

See Attachment 8.

XXI. CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS – 2 C.F.R. § 200, Appx. II(E)

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, including watchmen and guards, 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.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the U.S. (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 watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of $10 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 clause.
3. Withholding for Unpaid Wages and Liquidated Damages.

The FAA or the City shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or 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, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

XXII. CLEAN AIR AND WATER POLLUTION CONTROL – 2 C.F.R. § 200, Appendix II(G)

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251-1387). The Contractor agrees to report any violation to the City immediately upon discovery. The City assumes responsibility for notifying the Environmental Protection Agency (EPA) and the FAA.

Contractor must include this requirement in all subcontracts that exceeds $150,000.

XXIII. TRAFFICKING VICTIMS PROTECTION – 2 C.F.R. Part 175

The City may be unilaterally terminate this Contract without penalty, if the Contractor or a subcontractor is a private entity and:

1. Engages in severe forms of trafficking in persons during the period of time that this Contract is in effect:

2. Procures a commercial sex act during the period of time that this Contract is in effect; or

3. Uses forced labor in the performance of the Contract or subcontracts under this Contract.

If Contractor, an employee of the Contractor, or an employee of a subcontractor is determined by the City to have committed any prohibited act listed above through conduct that is either:

1. Associated with performance of this Contract or

2. Imputed to the Contractor using the standards and due process for imputing the conduct of an individual to an organization as provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by the federal awarding agency at 2 C.F.R. Part 376.

The Contractor must inform the City immediately of any information received from any source alleging a violation of any prohibited act listed above during the term of this Contract.

For purposes of this Section:

1. “Employee” means either:

   a. An individual employed by the Contractor or subcontractor who is engaged in the performance of this Contract or a subcontract under this Contract; or
b. Another person engaged in the performance of this Contract and not compensated by the Contractor or a subcontractor, including a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity” means any entity, other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25, and includes:
   a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).
   b. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the Trafficking Victims Protection Act, as amended (22 U.S.C. § 7102).

XXIV. Distracted Driving and Texting While Driving – Executive Order 13513 and DOT Order 3902.10

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving” (October 1, 2009), and DOT Order 3902.10, “Text Messaging While Driving” (December 30, 2009), the FAA encourages the City and Contractor, as recipients of federal funds, to adopt and enforce safety policies that decrease crashes caused by distracted drivers, including policies to ban text messaging while driving when performing any work related to this Contract, a grant, or a sub-grant.

In support of this initiative, the City encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with this Contract. The Contractor must include the substance of this clause in all sub-tier contracts exceeding $3,500 and involve driving a motor vehicle in the performance of work activities associated with this Contract.

XXV. Occupational Safety and Health Act of 1970 -- 29 C.F.R. Part 1910

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 C.F.R. Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 C.F.R. Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

XXVI. Copeland “Anti-kickback” Act – 2 C.F.R. § 200, Appendix II(D) and 29 C.F.R. Parts 3 and 5

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 U.S.C. § 874 and 40 U.S.C. § 3145), as supplemented by Department of Labor regulation 29 C.F.R. Part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each subcontractor must submit to the City a weekly statement on the wages paid to each employee performing on covered work during the prior week. The City must report any violations of the Act to the FAA.

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See also Section XIV.


All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 C.F.R. Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.


Contractor and subcontractor 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.

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products). 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.

XXIX. **Seismic Activity – 49 C.F.R. Part 41**

The Contractor agrees to ensure that all work performed under this Contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Contractor agrees to furnish the City a “certification of compliance” that attest conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.
§ 3.1 Purpose and scope.

This part prescribes “anti-kickback” regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

§ 3.2 Definitions.

As used in the regulations in this part:
(a) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part.

(b) The terms construction, prosecution, completion, or repair mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms public building or public work include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term building or work financed in whole or in part by loans or grants from the United States includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term any affiliated person includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term Federal agency means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

§ 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term employee shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this title during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be...
on the back of Form WH 347, “Payroll (For Contractors Optional Use)” or on any form with identical wording. Copies of WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/index.htm or its successor site.

(c) The requirements of this section shall not apply to any contract of $2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

§ 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under §3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 1235-0008)

§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, That the following standards are met:
§ 3.5 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under § 3.5. The Secretary may grant permission whenever he finds that:

(1) The deduction is not otherwise prohibited by law;

(2) It is either:

   (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

   (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the “reasonable cost” of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under §516.25(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either

   (1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

   (2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.


§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under § 3.5. The Secretary may grant permission whenever he finds that:

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(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

§ 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under § 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of § 3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of § 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.


§ 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of § 3.6; and shall notify the applicant in writing of his decision.

§ 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under § 3.6 are prohibited.

§ 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

§ 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by
the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the
regulations in this part as may be applicable. In this regard, see §5.5(a) of this subtitle.

Regulations: Applicable to Contracts
Part 5
Covering Federally Financed
and Assisted Construction

Title 29, Part 5 of the Code of Federal Regulations

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division

WH – 1244 (Revised January 2018)

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

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Source: 48 FR l9541, Apr. 29, 1983, unless otherwise noted.

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

Source: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

Editorial Note: Nomenclature changes to subpart A appear at 61 FR 19984, May 3, 1996.

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:


14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).


20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).


24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).


27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j–9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o–3(b)(1)(H)).


33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).


36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689(a)(5)).


46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).


50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).


52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).


54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).


(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§ 5.2 Definitions.

(a) The term Secretary includes the Secretary of Labor, the Deputy under Secretary for Employment Standards, and their authorized representatives.

(b) The term Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(c) The term Federal agency means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in §5.1.

(d) The term Agency Head means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term Contracting Officer means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term labor standards as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in §5.1, and the regulations in parts 1 and 3 of this subtitle and this part.

(g) The term United States or the District of Columbia means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term contract means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in §5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters,
levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms construction, prosecution, completion, or repair mean the following:

(1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of (paragraph (l) of this section by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, all work done in the construction or development of the project), including without limitation—

(i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;

(ii) Painting and decorating;

(iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);

(iv)(A) Transportation between the site of the work within the meaning of paragraph (l)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (l)(2) of this section; and

(B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (l)(1) of this section, and the physical place or places where the building or work will remain.

(2) (2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and except as provided in paragraph (jj)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not “construction, prosecution, completion, or repair” (see Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.), 932 F.2d 985 (D.C. Cir. 1991)).

(k) The term public building or public work includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term site of the work is defined as follows:

(1) The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (l)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work, provided they are dedicated exclusively, or nearly
so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the site of the work as defined in paragraph (l)(1) of this section;

(3) Not included in the site of the work are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in paragraph (l)(1) of this section, are not included in the site of the work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice, trainee, and helper are defined as follows:

(1) Apprentice means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) Trainee means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to apprentices and trainees employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A distinct classification of “helper” will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A “helper” classification will be added to wage determinations pursuant to §5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.
(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is employed regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term wages means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term wage determination includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of §1.6 of this title.

§ 5.3-5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 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.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) 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 shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). 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 classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall 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.

(ii)(A) The contracting officer shall 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 shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) 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 shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. 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.

(C) 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 shall 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.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall 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.

(iii) 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) 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, 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.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and
helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, 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.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, 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 section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) 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 section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall 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. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347 instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed 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 Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, 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 may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees —

(i) Apprentices and trainees—(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed 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 Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall 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 the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall 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, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program,
the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(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.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 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.

(9) Disputes concerning labor standards. 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.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) 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 section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a
Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).


(b) (b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the
contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this
section in full in any 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 §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and
mechanics include watchmen 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.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the
clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible
therefor shall be liable for the unpaid wages. 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 watchmen and guards, employed in
violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $26 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 (b)(1) of this
section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal
agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized
representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on
account of work performed by the contractor or subcontractor under any such contract or 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, which is held by the same prime contractor, such sums
as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for
unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(1) of this
section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set
forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to
include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for
compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs
(b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract
Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head
shall cause or require the contracting officer to insert a clause requiring that the contractor or
subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall
preserve them for a period of three years from the completion of the contract for all laborers and
mechanics, including guards and watchmen, working on the contract. Such records shall contain the
name and address of each such employee, social security number, correct classifications, hourly rates of
wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a
clause providing that the records to be maintained under this paragraph shall be made available by the
contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the
(write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

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§ 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by §5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in §5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of §5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by §5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of §5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to §5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by §5.5 and the applicable statutes listed in §5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with

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administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee’s identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR part 70) and the “Privacy Act of 1974” (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in §5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in §5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§ 5.7 Reports to the Secretary of Labor.

(a) Enforcement reports.

(1) (a) Enforcement reports. (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as “letters of notice”), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under §5.8.

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) Semi-annual enforcement reports. To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.
(c) Additional information. Upon request, the Agency Head shall transmit to the Administrator such information as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) Contract termination. Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in §5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages 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 any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of $26 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor of subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) Findings and recommendations of the Agency Head. The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to part 7 of this title, and the Administrative Review Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to part 8 of this title, and the Administrative Review Board in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.
§ 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in §5.5 and the applicable statutes listed in §5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

§ 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in §5.5 and the applicable statutes listed in §5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

§ 5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to §5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or §5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under §5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so
advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with §5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board.

§ 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in §5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in §5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in §5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to §5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in §5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative
defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in §5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under paragraph (a)(1) of this section may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in §5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in §5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Administrative Review Board pursuant to 29 CFR part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to “any firm, corporation, partnership, or association in which such persons or firms have an interest.” Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in §5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to “any firm, corporation, partnership, or association” in which such contractor or subcontractor has a “substantial interest.” A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.
(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator’s finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator’s ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Administrative Review Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in §5.1. No particular form is prescribed for the submission of a request under this section.

(4) Referral to the Chief Administrative Law Judge. The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR part 6.

(5) Referral to the Administrative Review Board. If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Administrative Review Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR part 7.


§ 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to part 1 of this subtitle, of the rules contained in this part and in parts 1 and 3, and of the labor standards provisions of any of the statutes listed in §5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

[82 FR 2226, Jan. 9, 2017]
§ 5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in §5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) General. Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) Exemptions. Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(2) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(3) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) Tolerances.

(1) The “basic rate of pay” under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and §778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the “regular rate” under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the “basic rate” under the Contract Work Hours and Safety Standards Act.

(3) See §5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.
(ii) The apprentice or trainee comes within the definition contained in § 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) Variations.

(1) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(2) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1 1/2 times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(3) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of section 102 of the Contract Work Hours and Safety Standards Act for failing to pay the overtime compensation required by section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.

(A) The employee receives gross wages of not less than $300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract.

(Reporting and recordkeeping requirements in paragraph (d)(2) have been approved by the Office of Management and Budget under control numbers 1235-0023 and 1235-0018. Reporting and recordkeeping requirements in paragraph (d)(3)(ii) have been approved by the Office of Management and Budget under control number 1235-0018)
§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of §5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of §5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to §5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

§ 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.
§ 5.20 Scope and significance of this subpart.

The 1964 amendments (Pub. L. 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in §5.12.

§ 5.21 [Reserved]

§ 5.22 Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in §1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of §1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms “wages”, “scale of wages”, “wage rates”, “minimum wages” and “prevailing wages”, as used in the Davis-Bacon Act.

§ 5.23 The statutory provisions.

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

(b) As used in this Act the term “wages”, “scale of wages”, “wage rates”, “minimum wages”, and “prevailing wages” shall include—

(1) The basic hourly rate of pay; and

(2) The amount of—

(A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits * * *.
§ 5.24 The basic hourly rate of pay.

“The basic hourly rate of pay” is that part of a laborer’s or mechanic’s wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

§ 5.25 Rate of contribution or cost for fringe benefits.

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.

(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See §5.5(a)(1)(i) and (iii).

§ 5.26 “** contribution irrevocably made ** to a trustee or to a third person”.

Under the fringe benefits provisions (section 1(b)(2) of the Act) the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The “third person” must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or in any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.27 “** fund, plan, or program”.

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase “fund, plan, or program” is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.28 Unfunded plans.

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from

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the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

1. It could be reasonably anticipated to provide benefits described in the act;
2. It represents a commitment that can be legally enforced;
3. It is carried out under a financially responsible plan or program; and
4. The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)

(c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the Act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words “reasonably anticipated” are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be “bona fide” and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by §5.5(a)(1)(iv).

§5.29 Specific fringe benefits.

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term “other bona fide fringe benefits” is the so-called “open end” provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be “bona fide” (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is “bona fide” in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under §5.5(a)(1)(iv).
(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are “bona fide” in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under §5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

§ 5.30 Types of wage determinations.
(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

<table>
<thead>
<tr>
<th>Classes</th>
<th>Basic hourly rates</th>
<th>Fringe benefits payments</th>
</tr>
</thead>
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(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

§ 5.31 Meeting wage determination obligations.
(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for “bona fide” fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the
By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for “bona fide” fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for “painters” in the illustration in paragraph (c) of §5.30 will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributions of not less than a total of 45 cents an hour for “bona fide” fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for “painters” in the illustration in paragraph (c) of §5.30, by paying directly to the painters a straight time hourly rate of not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) thru (3) of this section. Thus, for example, his obligations for “painters” may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be $4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be $3.75 in cash and 60 cents in payments or costs for fringe benefits.

[30 FR 13136, Oct. 15, 1965]

§ 5.32 Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase “contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program” was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics $3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of $3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of $3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their
straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying $3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of $3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be $3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the $3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying $3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to $2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as $1 an hour. In this example the regular or basic hourly rate would continue to be $3 an hour. See S. Rep. No. 963, p. 7.
"General Decision Number: AZ20200008   06/05/2020

Superseded General Decision Number: AZ20190008

State: Arizona

Construction Type: Highway

Counties: Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai and Yuma Counties in Arizona.

HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) or the EO minimum wage rate, if it is higher than the conformed wage rate. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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CARP0408-005 07/01/2019

Carpenter (Including Cement Form Work).................................................................................................................. $ 28.08 12.74

* ENGI0428-001 06/01/2020

Power Equipment Operator

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<tr>
<td>Group 4</td>
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Power Equipment Operators Classifications:

GROUP 1: A-frame boom truck, air compressor, Belcrete, boring bridge and texture, brakeman, concrete mixer (skip type), conductor, conveyor, cross timing and pipe float, curing machine, dinky (under 20 tons), elevator hoist (Husky and similar), firemen, forklift, generator (all), handler, highline cableway signalman, hydrographic mulcher, joint inserter, jumbo finishing machine, Kolman belt loader, machine conveyor, multiple power concrete saw, pavement breaker, power grizzly, pressure grout machine, pump, self-propelled chip spreading machine, slurry seal machine (Moto paver driver), small self-propelled compactor (with blade-
backfill, ditch operation), straw blower, tractor (wheel type), tripper, tugger (single drum), welding machine, winch truck

GROUP 2:
ALL COUNTIES INCLUDING MARICOPA: Aggregate Plant, Asphalt plant Mixer, Bee Gee, Boring Machine, Concrete Pump, Concrete Mechanical Tamping-Spreading Finishing Machine, Concrete Batch Plant, Concrete Mixer (paving & mobile), Elevating Grader (except as otherwise classified), Field Equipment Serviceman, Locomotive Engineer (including Dinky 20 tons & over), Moto-Paver, Oiler-Driver, Operating Engineer Rigger, Power Jumbo Form Setter, Road Oil Mixing Machine, Self-Propelled Compactor (with blade-grade operation), Slip Form (power driven lifting device for concrete forms), Soil Cement Road Mixing Machine, Pipe-Wrapping & Cleaning Machine (stationary or traveling), Surface Heater & Planer, Trenching Machine, Tugger (2 or more drums).

MARICOPA COUNTY ONLY: Backhoe < 1 cu yd, Motor Grader (rough), Scraper (pneumatic tired), Roller (all types asphalt), Screed, Skip Loader (all types 3<6 cu yd), Tractor (dozer, pusher-all).

GROUP 3:
ALL COUNTIES INCLUDING MARICOPA: Auto Grade Machine, Barge, Boring Machine (including Mole, Badger & similar type directional/horizontal), Crane (crawler & pneumatic 15>100 tons), Crawler type Tractor with boom attachment & slope bar, Derrick, Gradall, Heavy Duty Mechanic-Welder, Helicopter Hoist or Pilot, Highline Cableway, Mechanical Hoist, Mucking Machine, Overhead Crane, Pile Driver Engineer (portable, stationary or skid), Power Driven Ditch Lining or Ditch Trimming Machine, Remote Control Earth Moving Machine, Slip Form Paving Machine (including Gunner, Zimmerman & similar types), Tower Crane or similar type.

MARICOPA COUNTY ONLY: Backhoe<10 cu yd, Clamshell < 10 cu yd, Concrete Pump (truck mounted with boom only), Dragline <10 cu yd, Grade Checker, Motor Grader (finish-any type power blade), Shovel < 10 cu yd.

GROUP 4: Backhoe 10 cu yd and over, Clamshell 10 cu yd and over, Crane (pneumatic or crawler 100 tons & over), Dragline 10 cu yd and over, Shovel 10 cu yd and over.

All Operators, Oilers, and Motor Crane Drivers on equipment with Booms, except concrete pumping truck booms, including Jibs, shall receive $0.01 per hour per foot over 80 ft in addition to regular rate of pay Premium pay for performing hazardous waste removal $0.50 per hour over base rate.

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IRON0075-004 08/01/2019

COCONINO, MARICOPA, MOHAVE, YAVAPAI & YUMA COUNTIES

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Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson
Zone 2: 050 to 100 miles - Add $4.00
Zone 3: 100 to 150 miles - Add $5.00
Zone 4: 150 miles & over - Add $6.50

* LABO1184-008 06/01/2020

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LABORERS CLASSIFICATIONS:


GROUP 2: Asphalt Laborer (Shoveling-excluding Asphalt Raker or Ironer), Bander, Cement Mason Tender, Concrete Mucker, Cutting Torch Operator, Fine Grader, Guinea Chaser, Power Type Concrete Buggy

GROUP 3: Chain Saw, Concrete Small Tools, Concrete Vibrating Machine, Cribber & Shorer (except tunnel), Hydraulic Jacks and similar tools, Operator and Tender of Pneumatic and Electric Tools (not herein separately classified), Pipe Caulker and Back-Up Man-Pipeline, Pipe Wrapper, Pneumatic Gopher, Pre-Cast Manhole Erector, Rigger and Signal Man-Pipeline

GROUP 4: Air and Water Washout Nozzlemman; Bio-Filter, Pressman, Installer, Operator; Scaffold Laborer; Chuck Tender; Concrete Cutting Torch; Gunite; Hand-Guided Trencher; Jackhammer and/or Pavement Breaker; Scaler (using boson's chair or safety belt); Tamper (mechanical all types).


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ZONE PAY: More than 100 miles from Old Phoenix Courthouse $3.50 additional per hour.

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**OPERATOR: Power Equipment**

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<td>Crane (under 15 tons)</td>
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<td>Motor Grader (Rough) Coconino, Mohave, Pima, Pinal, Yavapai &amp; Yuma</td>
<td>$20.07</td>
<td>4.13</td>
</tr>
<tr>
<td>Oiler</td>
<td>$18.15</td>
<td>8.24</td>
</tr>
<tr>
<td>Power Sweeper</td>
<td>$16.76</td>
<td>4.44</td>
</tr>
<tr>
<td>Roller (all types Asphalt) Coconino, Mohave, Pima, Pinal, Yavapai &amp; Yuma</td>
<td>$18.27</td>
<td>3.99</td>
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<tr>
<td>Roller (excluding asphalt)</td>
<td>$15.65</td>
<td>3.32</td>
</tr>
<tr>
<td>Scraper (pneumatic tired) Coconino, Mohave, Pima, Pinal, Yavapai &amp; Yuma</td>
<td>$17.69</td>
<td>3.45</td>
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<tr>
<td>Screed Coconino, Mohave, Pima, Pinal, Yavapai &amp; Yuma</td>
<td>$17.54</td>
<td>3.72</td>
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<tr>
<td>Shovel &lt; 10 cu yd Coconino, Mohave, Pima, Pinal, Yavapai &amp; Yuma</td>
<td>$18.72</td>
<td>3.59</td>
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<tr>
<td>Skip Loader (all types &lt;3 cu yd)</td>
<td>$18.28</td>
<td>5.30</td>
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<td>Skip Loader (all types 3 &lt; 6 cu yd) Coconino, Mohave, Pima, Pinal, Yavapai &amp; Yuma</td>
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<td>4.86</td>
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<tr>
<td>Skip Loader (all types 6 &lt; 10 cu yd)</td>
<td>$20.15</td>
<td>4.52</td>
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<tr>
<td>Tractor (dozer, pusher - all) Coconino, Mohave, Pima, Pinal, Yavapai &amp; Yuma</td>
<td>$17.26</td>
<td>2.65</td>
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**PAINTER**

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
<th>Fringes</th>
</tr>
</thead>
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<tr>
<td>Coconino, Maricopa, Mohave, Pima, Pinal &amp; Yuma</td>
<td>$15.57</td>
<td>3.92</td>
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**TRUCK DRIVER**

<table>
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<tr>
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<tr>
<td>2 or 3 Axle Dump or Flatrack</td>
<td>$16.27</td>
<td>3.30</td>
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<td>5 Axle Dump or Flatrack</td>
<td>$13.97</td>
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<tr>
<td>6 Axle Dump or Flatrack (&lt; 16 cu yd)</td>
<td>$17.79</td>
<td>6.42</td>
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<td>Belly Dump</td>
<td>$14.67</td>
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<tr>
<td>Oil Tanker Bootman</td>
<td>$22.03</td>
<td>0.00</td>
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<tr>
<td>Self-Propelled Street Sweeper</td>
<td>$13.11</td>
<td>5.48</td>
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<tr>
<td>Water Truck 2500 &lt; 3900 gallons</td>
<td>$18.14</td>
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<tr>
<td>Water Truck 3900 gallons and over</td>
<td>$15.92</td>
<td>3.33</td>
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<tr>
<td>Water Truck under 2500 gallons</td>
<td>$15.94</td>
<td>4.16</td>
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**WELDERS** - Receive rate prescribed for craft performing operation to which welding is incidental.
Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

**Union Rate Identifiers**

A four-letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

**Survey Rate Identifiers**

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

**Union Average Rate Identifiers**

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state.
The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

    Branch of Construction Wage Determinations
    Wage and Hour Division
    U.S. Department of Labor
    200 Constitution Avenue, N.W.
    Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

    Wage and Hour Administrator
    U.S. Department of Labor
    200 Constitution Avenue, N.W.
    Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

    Administrative Review Board
    U.S. Department of Labor
    200 Constitution Avenue, N.W.
    Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

===================================================================================
END OF GENERAL DECISION"
BID PROPOSAL
CITY OF PHOENIX, ARIZONA
OFFICE OF THE CITY ENGINEER

PROJECT TITLE: PHOENIX SKY HARBOR INTERNATIONAL AIRPORT
TERMINAL 4 SOUTH 1 CONCOURSE CONCRETE APRON

PROJECT No(s).: AV08000083
FEDERAL AID PROJECT NO: 3-04-0029-0XX-20XX
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)

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 will be in accordance with all applicable Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Uniform Standard Details, 2012 revision, and the City of Phoenix Supplements, 2012 revision to the MAG Uniform Standard Specifications and Details, 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 this proposal will be submitted with a proposal guarantee of 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 will be completed within 247 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 will acknowledge all addenda in writing. By writing the addenda number(s) below, the bidder agrees that this proposal is computed with consideration of the specification book(s) plus any and all addenda.

<table>
<thead>
<tr>
<th>ADDENDA NO.</th>
<th>DATE</th>
<th>ADDENDA NO.</th>
<th>DATE</th>
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</table>
## PHOENIX SKY HARBOR INTERNATIONAL AIRPORT
### AV080000083 – TERMINAL 4 SOUTH 1 CONCOURSE CONCRETE APRON
### BID PROPOSAL FORM

<table>
<thead>
<tr>
<th>LINE NO.</th>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
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<th>UNIT</th>
<th>UNIT PRICE</th>
<th>EXTENDED TOTAL</th>
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<tr>
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<td>C-100.14.1</td>
<td>Contractor Quality Control Program Administrator (CQCP)</td>
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<td>C-100-14.2</td>
<td>Contractor Quality Control Inspectors</td>
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<td>HR</td>
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<td>C-100-14.3</td>
<td>Contractor Quality Control Testing</td>
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<td>C-102-5.1</td>
<td>Temporary Air and Water Pollution, Soil Erosion and Siltation Control</td>
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<td>Mobilization (Maximum 2% of Total Bid)</td>
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<td>C-105-6.2</td>
<td>Contractor Laydown Yard Setup</td>
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<td>C-105-6.4</td>
<td>Demobilization (Maximum 2% of Total Bid)</td>
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<td>C-106-5.1</td>
<td>Time Related Overhead</td>
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<td>C-107-7.1</td>
<td>CPM Schedule and Updates</td>
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<td>GP-50-21.1</td>
<td>Construction Survey and Layout</td>
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<td>GTP-10.01.1</td>
<td>Location of Underground Utilities</td>
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<td>13</td>
<td>GTP-30.01.1</td>
<td>Adjust Water Valve Frame &amp; Cover to Grade (COP DET P1270, P1391 Mod &amp; P1165)</td>
<td>7</td>
<td>EA</td>
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<td>14</td>
<td>GTP-30.02.1</td>
<td>Adjust Existing Manhole Frame &amp; Cover to Grade (MAG STD DET 422, Modified)</td>
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<td>15</td>
<td>GTP-30.03.1</td>
<td>Adjust Drain Basin to Grade</td>
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<td>16</td>
<td>GTP-30.04.1</td>
<td>Valley Gutter (MAG STD DET 240, Modified to 3-feet Wide)</td>
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<td>GTP-30.05.1</td>
<td>Jet Blast Deflection Fence and Foundation</td>
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<td>GTP-30.07.1</td>
<td>4,800 Gallon Stormwater Interceptor</td>
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<td>GTP-30.08.1</td>
<td>Adjust Manhole to Grade - Remove Manhole Flat-Top, Extend Riser</td>
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<td>LINE NO.</td>
<td>ITEM NO.</td>
<td>DESCRIPTION</td>
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<td>GTP-30.09.1</td>
<td>Bollard (Detail 2, Sheet A.C-104)</td>
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<td>Hazard Marker (MAG STD DET 141, Type 1)</td>
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<td>GTP-30.11.1</td>
<td>Concrete Sidewalk (COP STD DET P1230)</td>
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<td>Single Curb (MAG STD DET 222, Type A)</td>
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<td>25</td>
<td>P-101-5.1</td>
<td>Obliterate Pavement Markings</td>
<td>1,600</td>
<td>SF</td>
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<td>26</td>
<td>P-101-5.2</td>
<td>Sawcut Concrete Sidewalk</td>
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<td>27</td>
<td>P-101-5.3</td>
<td>Sawcut Asphalt Concrete Pavement</td>
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<td>P-101-5.4</td>
<td>Remove Asphalt Concrete Pavement (Full Depth)</td>
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<td>29</td>
<td>P-101-5.5</td>
<td>Remove 6' Temporary Service Road Asphalt Concrete Pavement</td>
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<td>Remove Concrete Sidewalk</td>
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<td>31</td>
<td>P-101-5.7</td>
<td>Remove Storm Drain Pipe</td>
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<td>P-101-5.8</td>
<td>Remove Catch Basin</td>
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<td>P-101-5.9</td>
<td>Cut &amp; Plug Storm Drain</td>
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<td>P-101-5.10</td>
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<td>P-101-5.12</td>
<td>Remove PCCP (Full Depth)</td>
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<td>P-152-4.1</td>
<td>Subgrade Preparation</td>
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<td>39</td>
<td>P-152-4.2</td>
<td>Unclassified Excavation</td>
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<td>CY</td>
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<td>P-152-4.3</td>
<td>Removal/Replacement of Unsuitable/Unstable Subgrade</td>
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<td>CY</td>
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<td>41</td>
<td>P-160.1</td>
<td>Remove Jet Fuel Impacted Soil</td>
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<td>Ton</td>
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<td>42</td>
<td>P-160.2</td>
<td>Replacement Backfill for Jet Fuel Impacted Soil</td>
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<td>CY</td>
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<td>43</td>
<td>P-160.3</td>
<td>Replacement Bedding Material for Jet Fuel Impacted Soil</td>
<td>100</td>
<td>CY</td>
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<td>44</td>
<td>P-161.1</td>
<td>Contaminated Soil Excavation</td>
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<td>LINE NO.</td>
<td>ITEM NO.</td>
<td>DESCRIPTION</td>
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<td>45</td>
<td>P-161.2</td>
<td>Contaminated Soil Replacement Bedding and Backfill</td>
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<td>%LS</td>
<td>$26,500.00</td>
<td>$26,500.00</td>
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<td>46</td>
<td>P-209-5.1</td>
<td>Crushed Aggregate Base Course or Recycled Concrete Aggregate Base Course (4-inch Depth)</td>
<td>7,930</td>
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<td>47</td>
<td>P-209-5.2</td>
<td>Crushed Aggregate Base Course or Recycled Concrete Aggregate Base Course (10-inch Depth)</td>
<td>40,000</td>
<td>SY</td>
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<td>48</td>
<td>P-403-8.1</td>
<td>Bituminous Surface Course (FAA 3/4&quot;, 4-Inch Thickness)</td>
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<td>49</td>
<td>P-501-8.1</td>
<td>Cement Concrete Pavement (Non Reinforced and Reinforced) (18-Inch Thickness)</td>
<td>40,000</td>
<td>SY</td>
<td></td>
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<tr>
<td>50</td>
<td>P-501.8.2</td>
<td>GSE Cement Concrete Pavement (9-Inch Thickness)</td>
<td>3,750</td>
<td>SY</td>
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<tr>
<td>51</td>
<td>P-604-6.1</td>
<td>Compression Joint Seal, 1/2-Inch Joint</td>
<td>39,000</td>
<td>LF</td>
<td></td>
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<tr>
<td>52</td>
<td>P-604-6.2</td>
<td>Compression Joint Seal, 1-Inch Joint</td>
<td>3,100</td>
<td>LF</td>
<td></td>
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<tr>
<td>53</td>
<td>P-604-6.3</td>
<td>Compression Joint Seal, 1 1/2-Inch Joint</td>
<td>2,000</td>
<td>LF</td>
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<tr>
<td>54</td>
<td>P-605-5.1</td>
<td>Edge Seal</td>
<td>500</td>
<td>LF</td>
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<tr>
<td>55</td>
<td>P-605-5.2</td>
<td>1&quot; Silicone Joint Seal</td>
<td>3,200</td>
<td>LF</td>
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<td>56</td>
<td>P-620-5.1</td>
<td>Temporary Paint and Markings (without glass beads)</td>
<td>500</td>
<td>SF</td>
<td></td>
<td></td>
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<tr>
<td>57</td>
<td>P-620-5.2</td>
<td>New Permanent Paint and Markings (with and without glass beads)</td>
<td>6,000</td>
<td>SF</td>
<td></td>
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<td>58</td>
<td>D-701-5.1</td>
<td>10-Inch DIP Storm Drain Connector Pipe</td>
<td>270</td>
<td>LF</td>
<td></td>
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<tr>
<td>59</td>
<td>D-701-5.2</td>
<td>12-Inch DIP Storm Drain Connector Pipe</td>
<td>150</td>
<td>LF</td>
<td></td>
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<td>60</td>
<td>D-701-5.3</td>
<td>24-Inch RGRCP Cl. V Storm Drain</td>
<td>270</td>
<td>LF</td>
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<tr>
<td>61</td>
<td>D-751-5.1</td>
<td>Aircraft Rated Manhole Cap (Detail 1, A.CG-106)</td>
<td>20</td>
<td>EA</td>
<td></td>
<td></td>
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<tr>
<td>62</td>
<td>D-751-5.2</td>
<td>Storm Drain Manhole Riser (COP STD DET P1520, MAG STD DET 522)</td>
<td>2</td>
<td>EA</td>
<td></td>
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<tr>
<td>63</td>
<td>D-751-5.3</td>
<td>Catch Basin, Type F (MAG STD DET 535, with Bolted Grate)</td>
<td>2</td>
<td>EA</td>
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<tr>
<td>64</td>
<td>D-751-5.4</td>
<td>Connect to Existing Pipe (MAG STD DET 505)</td>
<td>3</td>
<td>EA</td>
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<td>65</td>
<td>D-752-5.1</td>
<td>Trench Drain</td>
<td>1,060</td>
<td>LF</td>
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<td>66</td>
<td>L-108-5.1</td>
<td>Installation of Power from Obstruction Lights to Terminal Building (Below Ground)</td>
<td>380</td>
<td>LF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>L-108-5.2</td>
<td>Installation of Power from Existing Taxiway Edge Light to New Taxiway Edge Light</td>
<td>60</td>
<td>LF</td>
<td></td>
<td></td>
</tr>
<tr>
<td>68</td>
<td>L-108-5.3</td>
<td>Installation of Grounding Conductor from Existing Taxiway Edge Light to New Taxiway Edge Light</td>
<td>60</td>
<td>LF</td>
<td></td>
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</tr>
<tr>
<td>LINE NO.</td>
<td>ITEM NO.</td>
<td>DESCRIPTION</td>
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<tr>
<td>69</td>
<td>P-101-5.14</td>
<td>Demolition of Existing Electrical Items</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>70</td>
<td>P-101-5.15</td>
<td>Remove and Salvage Existing Light Fixtures along Taxiway D, Install Blank Cover Plate</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>71</td>
<td>L-110-5.1</td>
<td>Concrete Encased Electrical Conduit, 1-Way 2-inch, from Existing Taxiway Edge Light to New Taxiway Edge Light</td>
<td></td>
<td></td>
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<tr>
<td>72</td>
<td>L-115-5.1</td>
<td>Installation of new taxiway edge light canister</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>73</td>
<td>L-119-5.1</td>
<td>Airport Obstruction Light, Type L-810, in Place</td>
<td></td>
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<tr>
<td>74</td>
<td>L-125-2.7</td>
<td>Taxiway Edge Light Type L-861</td>
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<tr>
<td>75</td>
<td>GP-110-7.1</td>
<td>Airfield Safety and Security</td>
<td></td>
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<tr>
<td>76</td>
<td>SP-1.9</td>
<td>Owner Controlled Funds</td>
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<tr>
<th>EST. QTY.</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
<th>EXTENDED TOTAL</th>
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<td>12</td>
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<tr>
<td>40</td>
<td>LF</td>
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</tr>
<tr>
<td>1</td>
<td>EA</td>
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<td></td>
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<tr>
<td>3</td>
<td>EA</td>
<td></td>
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</tr>
<tr>
<td>1</td>
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<tr>
<td>1</td>
<td>LS</td>
<td>$ 250,000.00</td>
<td>$ 250,000.00</td>
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<tr>
<td>1</td>
<td>LS</td>
<td>$ 250,000.00</td>
<td>$ 250,000.00</td>
</tr>
</tbody>
</table>

CONSTRUCTION BID PROPOSAL TOTAL (ITEMS 1-76) $ 250,000.00

In Written Words _________________________________ dollars and _________________________ cents.
PROPOSAL SUBMITTAL

PROJECT TITLE: PHOENIX SKY HARBOR INTERNATIONAL AIRPORT TERMINAL 4 SOUTH 1 CONCOURSE CONCRETE APRON
PROJECT No(s).: AV08000083
FEDERAL AID PROJECT NO: 3-04-0029-0XX-20XX

THIS PROPOSAL IS SUBMITTED BY _________________________________________________________
a corporation organized under the laws of the state of ________________________________
partnership consisting of ____________________________________________________________
________________________________________________________________________________
a joint venture of ___________________________________________________________________
________________________________________________________________________________
or individual trading as __________________________________________________________________
________________________________________________________________________________
of the City of _______________________________________________________________________

FIRM __________________________
ADDRESS ______________________
CITY __________ STATE ____ ZIP CODE ________
PHONE _______________ VENDOR # __________
EMAIL ADDRESS: ________________________________
BY __________________________________________
Officer and Title (signature) __________________________________________
Date __________________________________________

WITNESS: If Contractor is an individual
(signature)

ATTEST: If Contractor is Corporation or Partnership
(signature and title)

P.S. – 1

Revised 4/20
SURETY BOND

PROJECT No(s): AV08000083
FEDERAL AID PROJECT NO: 3-04-0029-0XX-20XX

That we, ______________________________________, as Principal, (hereinafter called the Principal) and the ______________________________________, a corporation duly organized under the laws of the state of ______________________________________, a Surety, (hereinafter called 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 PHOENIX SKY HARBOR INTERNATIONAL AIRPORT TERMINAL 4 SOUTH 1 CONCOURSE CONCRETE APRON

NOW, THEREFORE, if the City of Phoenix will accept the proposal of the Principal and the Principal will 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 will 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 will be null and void, otherwise to remain in full force and effect.

Signed and sealed the _____ day of ______________________________ A.D., 20____

Principal

TITLE

______________________________

Surety

WITNESS

______________________________

A.M. BEST RATING:

S.B. - 1

Revised 4/20
Disadvantaged Business Enterprise (DBE) Program
DBE-Race & Gender Neutral (Non-Negotiated)
Form E02 DISADVANTAGED BUSINESS OUTREACH EFFORTS

Bidder’s Name: | Contract # / Project #: TBD / AV08000083 | Contract Title: T431 APRON CONSTRUCTION
Email: | Phone #: | Point of Contact:

Each bidder must conduct outreach efforts and submit documentation of those outreach efforts as described in the Disadvantaged Business Enterprise (DBE) Program Race & Gender Neutral Contract Clause. Detailed instructions for this form are included in the Contract Clause. Supporting documentation is required for Columns D and F. Bidders should make additional copies of this form as needed for their submittal.

(A) Small Business Name and Contact Information

| Name: | Address: | City, State, Zip: |
| Phone Number: | Email or Fax: | Number of Years in Business: |
| Range of Annual Gross Receipts: | Number of Employees: |

(B) Business Status

- DBE
- SBC - Small Business Concern
- SBE - City of Phoenix Certified
- Unknown

Estimated percentage of total contract value: %

List Scope(s) of Work

- E-mail Blast
- Phone Call
- In-Person
- Newspaper
- Website
- Trade Listing
- Outreach Event
- Other

(D) Solicitation Method

- Firm was selected
- Firm was not selected
- Provide explanation of why firm NOT selected

(D) Selection Decision

Date Firm was Notified:

Method used to Communicate Selection:
- Email
- Phone
- Fax
- Letter
- In person

(F) Communication Final Selection Outcome

*Firms must be notified of final selection outcome prior to submittal of columns E&F of this form.
City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

FORM EO3 SMALL BUSINESS UTILIZATION COMMITMENT (RGN)
(Due within 3 calendar days of the bid deadline.)

<table>
<thead>
<tr>
<th>Project Number:</th>
<th>Project Title:</th>
</tr>
</thead>
<tbody>
<tr>
<td>AV08000083</td>
<td>Terminal 4 S1 Apron Construction</td>
</tr>
<tr>
<td>FAA AIP 3-04-0029-0XX-20XX</td>
<td></td>
</tr>
</tbody>
</table>

On behalf of the Successful Bidder, I certify under the penalty of perjury that the information submitted herein is true and correct:

1. The firms indicated as “Selected” in Form EO2 Small Business Outreach Efforts, will participate in this contract;
2. The Successful Bidder will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;
3. Successful Bidder understands and agrees that any and all changes or substitutions to subcontracts with DBE’s and Small Businesses must be authorized by the Phoenix DBE Compliance Specialist prior to implementation; and
4. The following statements are true and correct:

The Proposed Total Disadvantaged Business percentage on this contract will be:

___________________ %

Company Name: __________________________________________________________

Company Mailing Address: ________________________________________________

Representative Name: _____________________________________________________

Title: __________________________________________________________________

Email Address: __________________________________________________________________

Phone Number: __________________________________________________________________

Signature: ___________________________    Date: ___________________________
CITY OF PHOENIX
LIST OF MAJOR SUBCONTRACTORS AND SUPPLIERS

PROJECT NO.: AV08000083  PROJECT TITLE: PHOENIX SKY HARBOR INTERNATIONAL AIRPORT TERMINAL 4 SOUTH 1 CONCOURSE CONCRETE APRON

<table>
<thead>
<tr>
<th>DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER TRADE/SUPPLIER AREAS)</th>
<th>SELF-PERFORMED BY PRIME CONTRACTOR</th>
<th>SUBCONTRACTOR/SUPPLIER COMPANY NAME (IF NOT SELF-PERFORMED)</th>
<th>CONTACT PERSON</th>
<th>PHONE NUMBER</th>
<th>DOLLAR VALUE OF WORK OR MATERIALS IN BID</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ YES  □ NO</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>□ YES  □ NO</td>
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<td>□ YES  □ NO</td>
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</tbody>
</table>

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 ________________________________________________

L.O.S. - 1

Revised 4/20
### CITY OF PHOENIX

**LIST OF ALL SUBCONTRACTORS AND SUPPLIERS**

**PROJECT NO.: AV08000083**  **PROJECT TITLE: PHOENIX SKY HARBOR INTERNATIONAL AIRPORT TERMINAL 4 SOUTH 1 CONCURSICE CONCRETE APRON**

<table>
<thead>
<tr>
<th>DESCRIPTION OF WORK OR MATERIALS (CONTRACTOR TO ENTER TRADE/SUPPLIER AREAS)</th>
<th>SELF-PERFORMED BY PRIME CONTRACTOR</th>
<th>SUBCONTRACTOR/SUPPLIER COMPANY NAME (IF NOT SELF-PERFORMED)</th>
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<th>DOLLAR VALUE OF WORK OR MATERIALS IN BID</th>
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<tbody>
<tr>
<td>□ YES □ NO</td>
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COMPANY NAME ___________________________ SIGNATURE ___________________________

NAME & TITLE ___________________________ PHONE NUMBER _____________ DATE _____________

EMAIL ADDRESS ___________________________

L.O.S. – 2

Revised 4/20
BIDDER’S DISCLOSURE STATEMENT

Authorized Contact for this Disclosure Statement

Name: ____________________________________________

Title: ____________________________________________

E-mail: __________________________________________

Phone number: ___________________________________

Vendor number: ___________________________________

List any other DBA, trade name, other identity, or EIN used in the last five (5) 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:

☐ Corporation  Date of incorporation: __________

☐ Limited Liability Company  Date organized: __________

☐ Limited Liability Partnership  Date of registration: __________

☐ Limited Partnership  Date established: __________

☐ General Partnership  Date established: __________

☐ Sole Proprietor  How many years in business?: ________

☐ Other (explain)  Date established: __________

Was the business entity formed in the State of Arizona? Yes_____  No_____  Not required ________ (if sole proprietor or general partnership)

If no, indicate jurisdiction where Business Entity was formed: ____________________________________________

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 uncommon 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_______

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

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
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: ___________________________

☐ Arizona non-operating identification license.
  Print first four 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: ___________________________

☐ Foreign Passport with United States Visa.
  Print first four numbers/letters on Passport: ___________________________
  Print first four numbers/letters on Visa: ___________________________

☐ I-94 Form with a photograph.
  Print first four numbers on I-94: ___________________________

  Print first four numbers/letters on EAD: ___________________________
  or Perm. Resident Card (acceptable alternative): ___________________________

☐ Refugee Travel Document.
  Date of issuance: _______________; Refugee country: _________________________

☐ U.S. Certificate of Naturalization.
  Print first four digits of CIS Reg. No.: ___________________________

☐ 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: ____________________
ATTACHMENT 1 - BUY AMERICAN CERTIFICATION

Certificate of Buy American Compliance for Total Facility
(Buildings, such as terminals, for snow removal equipment, for aircraft rescue and firefighting operations, etc.)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 U.S.C. § 50101 by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e. not both) by inserting a checkmark (√) or the letter “X”.

☐ Bidder or offeror hereby certifies that it will comply with 49 U.S.C. § 50101 by:
   a) Only installing steel and manufactured products produced in the United States; or
   b) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
   c) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

1. To provide to the City evidence that documents the source and origin of the steel and manufactured product.
2. To faithfully comply with providing U.S. domestic products.
3. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 U.S.C. § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 U.S.C. § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:

1. To submit to the City within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
2. That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
3. To faithfully comply with providing US domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
4. To furnish U.S. domestic product for any waiver request that the FAA rejects.
5. To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

Required Documentation

Type 3 Waiver - The cost of components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the “facility”. The required documentation for a type 3 waiver is:

   a) Listing of all manufactured products that are not comprised of 100% U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
   b) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
   c) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final
assembly and installation at project location.

**Type 4 Waiver** — Total cost of project using U.S. domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

a) Detailed cost information for total project using U.S. domestic product.
b) Detailed cost information for total project using non-domestic product.

**False Statements**: Per 49 U.S.C. § 47126, this certification concerns a matter within the jurisdiction of the FAA and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

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ATTACHMENT 2 – CERTIFICATION REGARDING LOBBYING

As a condition of responsiveness, this Certification must be submitted with each bid or offer exceeding $100,000.

The bidder or offeror certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or 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.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. 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.

The bidder or offeror, ____________________________, certifies the truthfulness and accuracy of each statement of this certification. In addition, the bidder or offeror understands and agrees that the provisions of 31 U.S.C. §§ 3801-3812, Administrative Remedies for False Claims and Statements, apply to this certification.

____________________________________________
Signature of Bidder’s/Offeror’s Authorized Official

____________________________________________
Name and Title of Bidder’s/Offeror’s Authorized Official

____________________________________________
Bidder’s/Contractor’s Firm Name

____________________________________________
Date

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ATTACHMENT 3 - RIGHTS IN DATA AND RIGHTS IN INVENTIONS

Contractor by entering into this Contract with the City to perform services associated with or in requirement of the conditions stated in this Contract does, by affixing its authorized signature on the lines provided below, agrees to the following:

1. That no sole rights to data provided in the submission or in fulfillment of contract requirements exist within the domain of the Contractor.

2. That all data provided in the submission or in the documents provided in fulfillment of this Contract become the property of the City for its use and benefit.

3. That no data submitted in documents required for Contract fulfillment will be regarded by the City as proprietary to the Contractor.

4. "Intellectual Property Rights" or "IPR" means all intellectual property rights, including any rights in any invention, patent, discovery, improvement, know-how, utility model, trade-mark, copyright, industrial design, mask work, integrated circuit topography, and trade secret, and all rights of whatsoever nature in computer software and data, confidential information, and all intangible rights or privileges of any nature similar to any of the foregoing, including in every case in any part of the world and whether or not registered, and shall include all rights in any applications and granted registrations for any of the foregoing.

5. “Joint IPR” means the Intellectual Property Rights conceived, created, developed, or reduced to practice in a Project pursuant to this Contract.

6. Intellectual Property Ownership. The City shall own all right, title, and interest in any Intellectual Property conceived, developed, created, or reduced to practice pursuant to this Contract, and Contractor shall have no ownership interest therein. Contractor hereby irrevocably transfers, conveys, and assigns to the City all of its right, title, and interest therein and in any property owned or to be owned by the City under this Contract. Contractor shall execute such documents, render such assistance, and take such other action as the City may reasonably request, at the City’s reasonable expense, to apply for, register, perfect, confirm, and protect City’s Intellectual Property Rights and ownership interests. The City has the exclusive right to apply for or register any patents, mask work rights, copyrights, and such other proprietary protections with respect thereto.

7. All documents, including artwork, copy, posters, billboards, photographs, video tapes, audio tapes, systems designs, drawings, estimates, field notes, investigations, software, reports, diagrams, surveys, analysis, studies, or any other original works of authorship created by Contractor in the performance of this Contract are to be and remain "works for hire" under Title 17, United States Code, and the property of the City and all copyright ownership and authorship rights in the works shall belong to the City pursuant to 17 U.S.C. § 201(b). If the works that are the subject matter of this Contract are deemed to not be works for hire, then Contractor hereby assigns to the City all of its right, title, and interest for the entire world in and to the works and the copyright therein. Contractor agrees to cooperate and execute additional documents reasonably necessary to conform with its obligations under this paragraph.

8. All Joint IPR will be the exclusive property of the City, and Contractor hereby assigns all its right, title, and interest in the same to the City. Any and all intellectual property conceived by the Contractor prior to the term of this Contract and utilized by it in rendering duties to the City are hereby licensed to the City for use in its operations and for an infinite duration. This license is non-exclusive and may be assigned without the Contractor’s prior written approval by the City. Contractor agrees to provide all reasonable assistance requested by the City for the registration and protection of such intellectual property rights free of charge.
Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Bidder's/Contractor's Firm Name

Date
ATTACHMENT 4 – TRADE RESTRICTION CERTIFICATION

By submission of a bid or offer, the bidder or offeror certifies that with respect to this solicitation and any resulting contract, the bidder or offeror:

1. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);

2. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.;

3. Has not entered into any subcontract for any product to be used on the federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. § 1001.

The bidder or offeror must provide immediate written notice to the City if the bidder or offeror learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require that subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 C.F.R. 30.17, no contract shall be awarded to a bidder or offeror or subcontractor:

1. Who is owned or controlled by one or more citizens or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R. or

2. Whose subcontractors are owned or controlled by one or more citizens or national of a foreign country on the U.S.T.R. list, or


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 provision. The knowledge and information of the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The bidder or offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that is not a firm from a foreign country foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R., unless the bidder or offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the FAA may direct through the City cancellation of the Contract or subcontract for default at no cost to the City of the FAA.
ATTACHMENT 5 – RESTRICTIONS ON FEDERAL PUBLIC WORKS PROJECTS CERTIFICATION

1. Definitions. The definitions pertaining to this clause are those that are set forth in 49 C.F.R. 30.7-30.9.

2. General. This clause implements the procurement provisions contained in the Continuing Resolution on the Fiscal Year 1988 Budget, Public Law No. 100-202, and the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law No. 100-223.

3. Restrictions. The Contractor shall not knowingly enter into any subcontract under this Contract:
   a. With a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.); or
   b. For the supply of any product for use on the Federal Public works project under this Contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

4. Certification. The Contractor may rely upon the certification of a prospective subcontractor that it is not a subcontractor of a foreign country included on the list of countries that discriminates against U.S. firms published by the U.S.T.R. and that products supplied by such subcontractor for use on the federal public works project under this Contract are not products of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., unless the Contractor has knowledge that the certification is erroneous.

5. Erroneous certification. The certification in paragraph (2) of the provision entitled "Restriction on Federal Public Works Projects-Certification," is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may cancel this Contract for default at no cost to the Government.

6. Cancellation. Unless the restrictions of this clause are waived as provided in paragraph (5) of the provision entitled "Restriction on Federal Public Works Projects-Certification," if the Contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the federal public works project under this Contract of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Contracting Officer may cancel this Contract for default, at no cost to the Government.

7. Subcontracts. The Contractor shall incorporate this clause, without modification, including this paragraph (7) in all solicitations and subcontracts under this Contract:

   Certification Regarding Restrictions on Federal Public Works Projects- Subcontractors

   a. The Bidder/Contractor, by submission of an offer and/or execution of a contract certifies that the Offeror/Contractor is:

      (1) Not a Bidder/Contractor owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the United States Trade Representative (U.S.T.R.) or

      (2) Not supplying any product for use on the federal public works project that is produced or manufactured in a foreign country included on the list of foreign countries that discriminate against U.S. firms published by the U.S.T.R.
THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, U.S.C SECTION 1001.

b. The Bidder shall provide immediate written notice to the Contractor if, at any time, the Bidder learns that its certification was erroneous by reason of changed circumstances.

c. The Contractor shall not knowingly enter into any subcontract under this Contract:

   (1) With a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.; or

   (2) For the supply of any product for use on the federal public works project under this Contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. The Contractor may rely upon the certification in paragraph (7)(a) of this clause unless it has knowledge that the certification is erroneous.

d. Unless the restrictions of this clause have been waived under the Contract for the federal public works project, if Contractor knowingly enters into a subcontract with a subcontractor that is a subcontractor of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or that supplies any product for use on the federal public works project under this Contract that is produced or manufactured in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R., the Government Contracting Officer may direct, through higher-tier Contractors, cancellation of this Contract at no cost to the Government.

e. Definitions. The definitions pertaining to this clause are those that are set forth in 49 C.F.R. 30.7-30.9.

f. The certification in paragraph (7)(a) of this clause is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Government Contracting Officer may direct, through higher-tier Contractors, cancellation of this subcontract at no cost to the Government.

g. The Contractor agrees to insert this clause, without modification, including this paragraph, in all solicitations and subcontracts under this clause.

________________________________________________
Signature of Bidder’s/Contractor’s Authorized Official

________________________________________________
Name and Title of Bidder’s/Contractor’s Authorized Official

________________________________________________
Bidder’s/Contractor’s Firm Name

________________________________________________
Date
ATTACHMENT 6 - CERTIFICATION ON PREVIOUS CONTRACTS
SUBJECT TO EQUAL OPPORTUNITY CLAUSE

Each Contractor and proposed subcontractors must complete the following form by checking the appropriate blanks.

The Contractor or subcontractor has _______ has not ______ participated in a previous contract subject to the Equal Opportunity Clause prescribed by Executive Order 11246, as amended, of September 24, 1965.

The Contractor or subcontractor has _______ has not ______ submitted all compliance reports in connection with any such contract due under the applicable filing requirements; and that representations indicating submission of required compliance reports signed by proposed subcontractors will be obtained prior to award of subcontractors.

If the Contractor or subcontractor has participated in a previous contract subject to the Equal Opportunity Clause and has not submitted compliance reports due under applicable filing requirements, the Contractor shall submit a compliance report on Standard Form 100, “Employee Information Report EEP-1” prior to the award of this Contract.

________________________________________________
Signature of Contractor’s Authorized Official

________________________________________________
Name and Title of Contractor’s Authorized Official

________________________________________________
Contractor’s Firm Name

________________________________________________
Contractor’s Business Address

________________________________________________
Date
ATTACHMENT 7 - CERTIFICATION OF NON-SEGREGATED FACILITIES

This Certification of Non-Segregated Facilities must be submitted prior to the award of a contract or subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity Clause.

Contractors receiving federally-assisted 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 supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Notice to Prospective Subcontractors of Requirements for Certification of Non-Segregated Facilities

1. A Certification of Non-Segregated Facilities shall be submitted prior to the award of a subcontract exceeding $10,000, which is not exempt from the provisions of the Equal Opportunity Clause.

2. Contractors receiving subcontract 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 this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed $10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

The Federally assisted Contractor certifies that he does not maintain or provide, for his employees any segregated facilities at any of his establishment, and that he does not permit his employees to perform their services at any location, under his control where segregated facilities are maintained. The Federally assisted Construction Contractor certifies further that he will not maintain or provide for his employees segregated facilities at any of his establishments, and that will not permit his employees to perform their services at any location, under this control, where segregated facilities are maintained. The Federally assisted Construction Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract.

As used in this certification, the term “segregated facilities” means any waiting room, work areas, and washrooms, restaurants and other eating area, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directives or are, in fact, segregated on the basis of race, color, religion, sex or national origin, because of habit, local custom, or any other reason. The Federally assisted Contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for special time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause and that he will retain such certifications in his files.

Certification: The above information is true and complete to the best of my knowledge and belief.

Name of Contractor or subcontractor: ________________________________

Signature and Title: ________________________________________________

Business Address: ________________________________________________

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ATTACHMENT 8 - CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

A. The Bidder/Contractor certifies to the best of its knowledge and belief that the Bidder/Contractor and/or any of its Principals:

1. Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

2. Have not within a three-year period preceding this bid, 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) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws or receiving stolen property; and

3. Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (A) (2) of this provision.

4. Have not within a three-year period preceding this bid been notified of any delinquent Federal taxes in an amount that exceeds $3,000 for which the liability remains unsatisfied.

5. Have not within a three-year period preceding this bid had one or more contracts terminated for default by any Federal agency.

B. For the purpose of this Certification, “Principals” means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).


1. The Bidder/Contractor must provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Bidder/Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

2. A certification that any of the items in paragraph (A) of this provision exists will not necessarily result in withholding of an award. However, the certification will be considered in connection with a determination of the Bidder’s/Contractor’s responsibility. Failure of the Bidder/Contractor to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Bidder/Contractor nonresponsible.

3. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (A) of this provision. The knowledge and information of a Bidder/Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

4. The certification in paragraph (A) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Bidder/Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the Contract for default.

_________________________________________ Signature of Bidder’s/Contractor’s Authorized Official

_________________________________________ Name and Title of Bidder’s/Contractor’s Authorized Official
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTER (continued)

_________________________________________________________ Bidder's/Contractor's Firm Name

_________________________ Date

(FAA/Date)
CERTIFICATION OF OFFERER/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

a) The applicant represents that it is (✓) is not ( ) a corporation that has 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.

b) The applicant represents that it is (✓) is not ( ) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government’s interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency’s SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is 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.

________________________________________________
Signature of Contractor's Authorized Official

________________________________________________
Name and Title of Contractor's Authorized Official

________________________________________________
Contractor's Firm Name

________________________________________________
Contractor's Business Address

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