



CITY OF PHOENIX
AVIATION DEPARTMENT
REQUEST FOR PROPOSAL
AVN RFP 22-009

AIRPORT FAA CONCESSIONS CONSULTANT
REQUIREMENTS CONTRACT

Kyle Brack
Procurement Officer
2485 E Buckeye Rd
Phoenix, AZ 85034

Solicitation Posting Date: January 6, 2022



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Please read before continuing to the offer document. This list may not include every requirement; the purpose is to assist vendors, but vendors are expected to read and comply with the entire solicitation.

SOLICITATION RESPONSE CHECK LIST

Check off each of the following as the necessary action is completed.

- All forms have been completed and signed, including Solicitation Disclosure form.
- All Submittals are included.
- Reviewed and verified prices offered.
- Checked price extensions and totals.
- Included any required drawings or descriptive literature.
- If required, checked and included the amount of the offer surety.
- Reviewed the insurance requirements, if any, to assure compliance.
- Included the specified number of copies of the offer as indicated in Submittal section.
- Included signed addenda, if any.
- Addressed the mailing envelope to the Procurement Officer on the solicitation front page, at the address listed.
- If choosing this option: the mailing envelope clearly shows your company name and address, the solicitation number, solicitation title and the offer opening date.
- If choosing this option: mailed the response in time – City must receive offers no later than the date and time indicated in the Schedule of Events or addenda.



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1. DESCRIPTION – STATEMENT OF NEED:

- 1.1. The City of Phoenix (“City”) invites sealed offers for **Airport FAA Concessions Consultant** for a **five-year** period commencing on or about **July 1, 2022**, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by the City Council, conditioned on signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.
- 1.2. This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.
- 1.3. Notwithstanding the foregoing, this Agreement will terminate upon the earliest of the following occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Agreement.

2. CITY’S VENDOR SELF-REGISTRATION AND NOTIFICATION: Offeror must be registered in the City’s procurePHX Self-Registration System at <https://www.phoenix.gov/financesite/Pages/EProc-help.aspx> to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an Offeror who has not registered. The product category code for this RFP is: 918170000 (Aviation Consulting).

3. SCHEDULE OF EVENTS:

ACTIVITY	DATE AND TIME (All times are local Phoenix time)
Publish Solicitation	Thursday, January 6, 2022
Pre-Offer Conference	Wednesday, January 12, 2022 @ 1:00 p.m. Join by Phone: +1-415-655-0001 Access Code: 2460 448 8783 Meeting Link: https://cityofphoenix.webex.com/cityofphoenix/ons tage/g.php?MTID=e66a3d21a8b5d23ce5b38961bd2ca84e4
Written Inquiries Due Date	Wednesday, January 19, 2022 by 5:00 p.m. Email inquiries to kyle.brack@phoenix.gov



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Offer Due Date	Thursday, February 10, 2022 @ 2:00 p.m.
Opening of Offers	Thursday, February 10, 2022 @ 2:15 p.m. Join by Phone: +1-415-655-0001 Access Code: 2467 037 8753 Meeting Link: https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=m2144073fef45464622f6a0497516cbb4
Offer Submittal Location	Physical Submission: 2485 E Buckeye Rd, Phoenix, AZ 85034 <u>OR</u> Electronic Submission: via email to avn.solicitations@phoenix.gov and copy kyle.brack@phoenix.gov . Please follow all additional instructions listed under paragraph 12, Submission of Offer, Section I – Instructions.

The City reserves the right to change dates, times, and locations, as necessary. The City does not always hold a pre-offer conference or site visit.

4. PREPARATION OF OFFER:

- 4.1. All forms provided in Submittal Section must be completed and submitted with the offer. The signed and completed Solicitation Disclosure form must be included or your offer may be deemed non-responsive.
- 4.2. It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the offer must be initialed in original ink by the authorized person signing the offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror's errors or omissions.
- 4.3. All time periods stated as a number of days will be calendar days.
- 4.4. It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an



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offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:

- 4.4.1. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
- 4.4.2. Study and carefully correlate Offeror's knowledge and observations with the solicitation and other related data.
- 4.4.3. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.
- 4.4.4. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
- 4.4.5. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
- 4.4.6. Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
- 4.4.7. Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

5. OBTAINING A COPY OF THE SOLICITATION AND ADDENDA: Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/> Any interested Offerors without internet access may



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obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix Aviation Headquarters, Contracts & Services Division, 2485 E Buckeye Rd, Phoenix, AZ 85034. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their offer.

6. **EXCEPTIONS:** Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to send inquiries to the procurement officer rather than including exceptions in their Offer.
7. **INQUIRIES:** All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the Schedule of Events. The City will not consider questions received after the deadline.

No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff from date of distribution of this solicitation until after the resulting Contract(s) are awarded or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation. All questions concerning or issues related to this solicitation must be presented **in writing** via email to kyle.brack@phoenix.gov.

The Procurement Officer will answer written inquiries in an addendum and publish any addendums on the Procurement Website.

8. **ADDENDA:** The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this solicitation. Any changes will be in the form of an addendum. **The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the offer submittal. Failure to acknowledge receipt and returning signed addenda may result in the rejection of Offer as non-responsive.**
9. **BUSINESS IN ARIZONA:** The City will not enter Contracts with Offerors (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of Arizona by the Arizona Corporation Commission, unless the Offeror asserts a statutory exception prior to entering a Contract with the City.
10. **LICENSES:** If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.



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11. CERTIFICATION: By signature in the offer section of the Offer and Acceptance page(s), Offeror certifies:

- The submission of the offer did not involve collusion or other anti-competitive practices.
- The Offeror must not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

12. SUBMISSION OF OFFER – PHYSICAL SUBMISSION: Offers must be in possession of the Aviation Department on or prior to the exact time and date indicated in the Schedule of Events “Solicitation Deadline.” Late offers will not be considered. The prevailing clock will be the Aviation Department’s clock.

Offers must be completed in ink or typewritten and must include the required number of copies indicated in the Submittal section. Offers must be submitted in a sealed, opaque package marked with the following information:

Offeror’s Name
Offeror’s Address (as shown on the Certification Page)
AVN RFP 22-009
Airport FAA Concessions Consultant
Offer Opening Date

For “In-Person” and “via Carrier (i.e. USPS, FedEx, UPS, etc.)” Delivery: Offers will be received at Aviation Headquarters located at 2485 E Buckeye Rd, Phoenix, AZ 85034 in the **LOBBY** during normal business hours (8:00 am – 5:00 pm local Phoenix time). The Offeror is responsible for managing potential delays due to COVID-19. The City does not make exceptions for delays caused by the Carrier.

13. SUBMISSION OF OFFER – ELECTRONIC SUBMISSION: Due to the national COVID-19 pandemic, the City of Phoenix Aviation Department is accepting electronic Offers for this solicitation, in addition to other methods of submitting sealed offer packages (hard copies). Offerors are responsible for submitting the electronic offer on or before the Solicitation Deadline.

For “Electronic” Submittal: Offers must be submitted via email to avn.solicitations@phoenix.gov and copy kyle.brack@phoenix.gov. Due to file size limitations of 100mb for electronic transmission (for sending or receiving), offers sent



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by email may need to be sent in parts with multiple emails. The date and time on the email(s) as received/stamped by the City's inbox will provide proof of submission and verification whether the Offer (including all parts if sent in multiple emails) was received on or before the Solicitation Deadline. The solicitation number and title "AVN RFP 22-009 Airport FAA Concessions Consultant" must be included on the subject line of the email when submitting Offer.

Offeror may submit electronic signatures on documents that do not require notarization. Please ensure that electronically signed documents are submitted in separate pdf files. The City does not accept electronic signatures for notarized documents, including bonds, guaranties, powers of attorney or affidavits. These documents must be submitted in paper form (hard copy) with original or "wet-signatures" at time of the Solicitation Deadline and submission must comply with the requirements in Paragraph 12.

It is the responsibility of the Offeror to ensure that the Offer is timely, including confirming that there are no technical reasons that any Offer submitted electronically may be delayed.

14. **WITHDRAWAL OF OFFER:** At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the offer by submitting a request in writing and signed by a duly authorized representative.
15. **OFFER RESULTS:** Due to the national COVID-19 pandemic emergency and in compliance with the Center of Disease Control and Prevention (CDC) and the Arizona Department of Health Services recommendations for health, safety, and social distancing, all Aviation Department public openings will be held via remote telephone and video access until further notice.

The offer openings will take place on their designated date and time through remote video and telephone conference with the link and dial-in phone number provided by the Aviation Department to the public. Offeror's name will be posted for public access on the City of Phoenix solicitation website.

Meeting Link:

<https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=m2144073fef45464622f6a0497516cbb4>

Join by Phone: +1-415-655-0001

Access Code: 2467 037 8753

Offers will be opened remotely and accessible by the public at the link provided on the offer due date and time indicated in the Schedule of Events, at which time the



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name of each Offeror will be made available. The City will post the Offeror's name on the City's website, <https://solicitations.phoenix.gov/Awards> within five calendar days of the offer opening. Offers are not available for public inspection until after the City has posted the award recommendation on the City's website. Once the City has reviewed the offers, the City will post an award recommendation on the website. The City will not provide any further notification to unsuccessful Offerors.

16. PRE-AWARD QUALIFICATIONS:

- 16.1 Offeror must have a minimum of three (3) years of experience in the last five (5) years providing DBE and ACDBE Consulting Services for a large-hub, primary airport.
- 16.2 Offeror must have experience working in an official capacity with the United States Department of Transportation (Federal Aviation Administration (FAA), Federal Transit Administration (FTA), Federal Highway Administration (FHA)), through an established Contract / agreement or some other verifiably official means.
- 16.3 Offeror must have experience working on a minimum of two (2) DBE/ACDBE/Small Business Enterprise disparity studies.
- 16.4 Upon notification of an award the Offeror will have 30 calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this solicitation. Insurance requirements are non-negotiable.

17. AWARD OF CONTRACT:

- 17.1 Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.
- 17.2 Factors that may be considered by the City include:
 - Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial Contracts; and,
 - Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
 - Safety record; and,
 - Vendor history of complaints and termination for convenience or cause.



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17.3 Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.

17.4 A response to a solicitation is an offer to Contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become Contracts until they are executed by the Deputy Aviation Director or Aviation Department Director. A Contract has its inception in the award, eliminating a formal signing of a separate Contract. For that reason, all of the terms, conditions and specifications of the procurement Contract are contained in the solicitation, and in any addendum or Contract amendment.

18. CONTENT OF RESPONSE:

The Offerors' response will include the following:

18.1 Description of how the work would be performed.

18.2 Cost estimate for completing requested work, including hourly or daily rates where appropriate.

18.3 Names and resumes of the proposed staff, including managers and supervisors.

18.4 Brief assessment of the present workload capacity.

18.5 List of current business references.

19. CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST: The City reserves the right to disqualify any Offeror based on any real or apparent conflict of interest that is disclosed by the offer submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Offeror submitting an offer herein waives any right to object now or at any future time, before any agency or body, including but not limited to, the City Council of the City of Phoenix or any court.

20. SOLICITATION TRANSPARENCY POLICY:

20.1 Commencing on the date and time a solicitation is published, potential or actual Offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under Arizona Statutes, until the resulting Contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.

20.2 As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation



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with the City staff. Offerors may not discuss the solicitation with any City employees or evaluation panel members.

20.3 Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

20.4 With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

20.5 This policy is intended to create a level playing field for all Offerors, assure that Contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

20.6 "To discuss" means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting Contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the Contract, as long as the City cancels with a statement that the City will rebid the solicitation.

21. PROTEST PROCESS:

21.1 Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an addendum to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City's best interests to set new deadlines, amend the solicitation, cancel or re-bid.



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- 21.2** Therefore, unless otherwise notified by a formal addendum, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.
- 21.3** Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.
- 21.4** Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the Contract and will be harmed by the recommended award. The City will post recommendations on the City's website to award the Contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City's full and final discretion.
- 21.5** All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:
- 21.5.1** Identification of the solicitation number;
 - 21.5.2** The name, address and telephone number of the protester;
 - 21.5.3** A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
 - 21.5.4** The form of relief requested; and
 - 21.5.5** The signature of the protester or its authorized representative.
- 21.6** The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the Contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City's Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.
- 22. PUBLIC RECORD:** All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer is treated by the Procurement Officer as confidential provided the Offeror clearly labels the information



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“confidential.” To the extent necessary for the evaluation process, information marked as “confidential” will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as “confidential” available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Offeror in writing of any request to view any portion of its Offer marked “confidential.” The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

- 23. LATE OFFERS:** Late Offers must be rejected, except for good cause. If a late Offer is submitted, the Aviation Department will document the date and time of the submittal of the late Offer, keep the Offer and notify the Offeror that its Offer was disqualified for being late.
- 24. RIGHT TO DISQUALIFY:** The City reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offeror submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.
- 25. CONTRACT AWARD:** The City reserves the right to award a Contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award.
- 26. EQUAL LOW OFFER:** Contract award will be made by putting the names of the tied vendors in a cup for a blind drawing limited to those bidders with tied offers. If time permits, the offerors involved will be given an opportunity to attend the drawing. The drawing will be witnessed by at least three persons, and the Contract file will contain the names and addresses of the witnesses.
- 27. EVALUATION OF COMPETITIVE SEALED OFFERS:** The City will use its discretion in applying the following processes to this solicitation. Any ties in scoring will be resolved with a best and final price request and the lowest price will prevail.



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28. DETERMINING RESPONSIVENESS AND RESPONSIBILITY:

28.1 Offers will be reviewed for documentation of minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

28.2 Responsiveness: Non-responsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers (as the case may be) will render an Offer non-responsive.

28.3 Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and an Offer that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as non-responsive. Alternatively, the City in its sole discretion may instruct in writing that any Offeror remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so in writing, the City may determine the Offer to be non-responsive.

28.4 Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the Contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible Contractor. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

28.5 The Procurement Officer will review each Offer to determine if the Offeror is responsible. The City's determination as to whether an Offeror is responsible will be based on all information furnished by the Offeror, interviews (if any), and information received from Offeror's references, including information about Offeror's history, terminations for convenience or cause, Contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the solicitation will not be made until any necessary investigation, which each Offeror agrees to permit by submitting its Offer, is made by the City as it deems necessary. A review of responsibility may occur up to Contract award.

28.6 The Offeror's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.

29. DETAILED EVALUATION OF OFFERS AND DETERMINATION OF COMPETITIVE RANGE: During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price,



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which will be added to the overall consensus score. The overall consensus scores will determine the Offerors' rankings and which Offers are within the Competitive Range, when appropriate.

30. OFFERS NOT WITHIN THE COMPETITIVE RANGE: The City may notify Offerors of Offers that the City determined are not in the Competitive Range.

31. DISCUSSIONS WITH OFFERORS IN THE COMPETITIVE RANGE:

31.1 The City will notify each Offeror whose Offer is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Offeror. Each Offeror so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Offer. The Offerors in the competitive range may be required to provide a demonstration of their product.

31.2 Demonstrations - Offerors in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Phoenix. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).

31.3 If an Offer in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation Scope requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Offeror to remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so, the City may determine the Offer is non-responsive, and the City may revoke its determination that the Offer is in the Competitive Range.

31.4 To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Offeror about other Offers received in response to this solicitation. During discussions with Offerors in the Competitive Range, the City will not give Offerors specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Offerors will not be told of their relative rankings before Contract award.

32. BEST AND FINAL OFFERS (BAFO):



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- 32.1** A BAFO is an option available for negotiations. Each Offeror in the Competitive Range, which is determined in the City's sole discretion, may be afforded the opportunity to amend its Offer and make one BAFO.
- 32.2** If an Offeror's BAFO modifies its initial Offer, the modifications must be identified in the BAFO. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Offers. The City will adjust appropriately the initial scores for criteria that have been affected by Offer modifications made by a BAFO. Based on the criteria defined in the solicitation as weighted, the City will then perform final scoring and prepare final rankings.
- 32.3** The Evaluation Panel will recommend the Offer that is the best value and most advantageous to the City based on the evaluation criteria.
- 32.4** The City reserves the right to make an award to an Offeror whose Offer is the highest rated, best value, and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.



SECTION II – STANDARD TERMS AND CONDITIONS

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

- Shall, Will, Must:** Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.
- Should:** Indicates something that is recommended but not mandatory. If the Contractor fails to provide recommended information, the City may, at its sole option, ask the Contractor to provide the information or evaluate the offer without the information.
- May:** Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions will apply:

- “A.R.S.” Arizona Revised Statute
- “Buyer” or “Procurement Officer” City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this Contract.
- "City" The City of Phoenix
- "Contractor" The individual, partnership, or corporation who, as a result of the competitive process, is awarded a Contract by the City of Phoenix.
- "Contract" or "Agreement" The legal agreement executed between the City of Phoenix, AZ and the Contractor.
- “Days” Means calendar days unless otherwise specified.
- “Deputy Aviation Director” or “Aviation Department Director” The Contracting authority for the City of Phoenix, AZ, authorized to sign Contracts and amendments thereto on behalf of the City of Phoenix, AZ.



“Employer”	Any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent Contractor, employer means the independent Contractor and does not mean the person or organization that uses Contract labor. (A.R.S. 23-211).
“Good Cause”	Substantial grounds or evidence based upon facts not in dispute as determined by the Procurement Officer that the failure by an aggrieved party an Offeror or a Respondent to submit a timely offer response protest or appeal was beyond its control due to misinformation relayed in writing by a City employee.
“Offer”	Means a response from a supplier, Contractor or service provider to a solicitation request that, if awarded, binds the supplier, Contractor or service provider to perform in accordance with the Contract. Same as bid, proposal, quotation or tender.
“Offeror”	Any Vendor, Seller, or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.
“Solicitation”	Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed bids, or any other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, bids or quotes from suppliers.
“Suppliers”	Firms, entities or individuals furnishing goods or services to the City.
“Vendor or Seller”	A seller of goods or services.



2. CONTRACT INTERPRETATION:

2.1 APPLICABLE LAW: This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.

2.2 CONTRACT ORDER OF PRECEDENCE: In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:

- 2.1.1 Special terms and conditions
- 2.1.2 Standard terms and conditions
- 2.1.3 Amendments
- 2.1.4 Statement or scope of work
- 2.1.5 Specifications
- 2.1.6 Attachments
- 2.1.7 Submittals
- 2.1.8 Exhibits
- 2.1.9 Instructions to Contractors
- 2.1.10 Other documents referenced or included in the Solicitation

2.3 ORGANIZATION – EMPLOYMENT DISCLAIMER: The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.

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

2.5 NON-WAIVER OF LIABILITY: The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit



in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.

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

3. CONTRACT ADMINISTRATION AND OPERATION:

3.1 RECORDS: All books, accounts, reports, files and other records relating to the Contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the Contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements vendor has in place.

3.2 DISCRIMINATION PROHIBITED: Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended.

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 supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and 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 supplier 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. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.

3.3 EQUAL EMPLOYMENT OPPORTUNITY AND PAY: 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



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any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

For a Contractor with 35 employees or fewer: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor 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. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.

For a Contractor with more than 35 employees: Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor 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 shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.



3.3.3 Documentation: Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

3.3.4 Monitoring: The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

3.4 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:

3.4.1 Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.

3.4.2 A breach of a warranty under paragraph 1 will be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract.

3.4.3 The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.

3.5 HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS: The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of City representatives, the Contractor will provide the City:

3.5.1 Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this Contract

3.5.2 A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.

The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement.



The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).

3.6 COMPLIANCE WITH LAWS: Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance. Because the Contractor will be acting as an independent Contractor, the City assumes no responsibility for the Contractor's acts. Contractor shall comply with the provisions of the **Supplemental Terms and Conditions to All Airport Agreements** attached, marked **Exhibit A**, and incorporated herein.

3.7 LAWFUL PRESENCE REQUIREMENT: Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a Contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this 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. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies

3.8 CONTINUATION DURING DISPUTES: Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.

3.9 EMERGENCY PURCHASES: The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

4. COSTS AND PAYMENTS:

4.1 GENERAL: Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.

4.2 PAYMENT DEDUCTION OFFSET PROVISION: Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it



owes to the City will be offset against any payment due to the Contractor from the City.

4.3 LATE SUBMISSION OF CLAIM BY CONTRACTOR: The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.

4.4 DISCOUNTS: Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

4.5 NO ADVANCE PAYMENTS: Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.

4.6 FUND APPROPRIATION CONTINGENCY: The Vendor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Vendor and the City herein recognize that the continuation of any Contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such Contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.

4.7 MAXIMUM PRICES: The City will not be invoiced at prices higher than those stated in any Contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.

5. CONTRACT CHANGES:

5.1 CONTRACT AMENDMENTS: Contracts will be modified only by a written Contract amendment signed persons duly authorized to enter into Contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the Contract, will affect or modify any of the terms or obligations contained or to be contained in the Contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and Contract changes shall be by written amendment signed by both parties.



5.2 ASSIGNMENT - DELEGATION: No right or interest in this Contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.

5.3 NON-EXCLUSIVE CONTRACT: Any Contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source when necessary.

6. RISK OF LOSS AND LIABILITY:

6.1 TITLE AND RISK OF LOSS: The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.

6.2 ACCEPTANCE: All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.

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

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



6.4 LOSS OF MATERIALS: The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the Contract operations have commenced until the final acceptance of the work by the project manager.

6.5 CONTRACT PERFORMANCE: Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the Contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor.

The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

6.6 DAMAGE TO CITY PROPERTY: Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

7. CITY'S CONTRACTUAL RIGHTS: Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this Contract.

7.2 NON-EXCLUSIVE REMEDIES: The rights and remedies of the City under this Contract are non-exclusive.

7.3 DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH: Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.



7.4 ON TIME DELIVERY: Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.

7.5 DEFAULT: In case of default by the Contractor, the City may, by written notice, cancel this Contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

7.6 COVENANT AGAINST CONTINGENT FEES: Seller warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the Contract without liability or in its discretion to deduct from the Contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

7.7 COST JUSTIFICATION: In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.

7.8 WORK PRODUCT, EQUIPMENT AND MATERIALS: All work product, equipment, or materials created or purchased under this Contract belongs to the City and must be delivered to the City at City’s request upon termination of this Contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this Contract that are “works for hire” within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

8. CONTRACT TERMINATION:

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

8.2 CONDITIONS AND CAUSES FOR TERMINATION:

8.2.1 This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to



Contractor. The City at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City will be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

8.2.2 The City reserves the right to cancel the whole or any part of this Contract due to failure of Contractor to carry out any term, promise, or condition of the Contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:

- In the opinion of the City, Contractor provides personnel who do not meet the requirements of the Contract;
- In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;
- In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality.
- Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;
- In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the Contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the Contract.

8.3 CONTRACT CANCELLATION: All parties acknowledge that this Contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

9. 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 and legal liability to remit taxes are on the vendor that is conducting business in Arizona and the City of Phoenix. 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 look at the price or



offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your offer. You may also find information at <https://www.phoenix.gov/finance/plt> or <https://www.azdor.gov/Business.aspx>. Once your offer 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, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in a offer price.

- 10. TAX INDEMNIFICATION:** Contractor will pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor, and require the same of all subcontractors. Contractor will 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, and require the same of all subcontractors.
- 11. 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 Aviation Department in evaluating Contractor's qualifications for and compliance with Contract for duration of the term of Contract.
- 12. ATTORNEY FEES:** In any contested action related to or arising out of this Contract, the prevailing party shall recover its attorney fees, court costs, and other expenses from the other party. Where there are no competing claims, "prevailing party" means the party that substantially obtained the relief sought. Where there are competing claims, the prevailing party is the net winner or the party who prevailed in a totality of the litigation.
- 13. HEADINGS:** Headings for articles, sections, and paragraphs are for reference only and do not limit the content or scope of any provision of this Contract.
- 14. NATIONAL EMERGENCY:** This Contract is subject to the right of the United States to control, operate, and regulate the Airport and to use of the Airport during the time of war or national emergency.



- 15. NO IMPAIRMENT OF TITLE:** Contractor and its agents, employees, and Contractors shall not cause or allow any person or entity to cause any lien, cloud, charge, or encumbrance to be filed, recorded, or imposed on the Airport or any portion thereof.
- 16. NO PERSONAL LIABILITY:** The City’s officers, officials, agents, and employees are not personally liable to Contractor for any default or breach of this Contract by the City, are not liable for any amount that may become due to Contractor, and are not obligated to perform under any provision of this Contract.
- 17. SUCCESSORS AND ASSIGNS:** This Contract binds the parties and their owners, officers, directors, managers, members, agents, employees, representatives, trustees, executors, personal representatives, and successors.
- 18. TERMINATION FOR NON-APPROPRIATION OF FUNDS:** This Contract is contingent on the appropriation of adequate funds by the Phoenix City Council for each fiscal year during the term of this Contract. If adequate funds are not appropriated, then this Contract shall terminate on June 30 of the last fiscal year for which funds were appropriated. The termination shall be without penalty or any liability by the City.
- 19. BREACH AND REMEDIES FOR BREACH:** The occurrence of any of the following events shall be deemed a material breach of this Contract by Contractor:
- Contractor fails to pay any amount when due and the failure continues for ten (10) days after notice from the City.
 - Except for the non-monetary events of breach listed below, Contractor fails to perform any non-monetary obligation under this Contract and the failure continues for ten (10) days after notice from the City.
 - Contractor fails to procure and maintain the insurance coverages required under this Contract and the failure continues for one (1) day after notice from the City.
 - Contractor breaches any other lease, Contract, agreement, or permit it has with the City.
 - Contractor files a voluntary petition in bankruptcy; is adjudicated bankrupt or insolvent; takes the benefit of any law applicable to bankrupt or insolvent debtors; files a petition or seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief; seeks or acquiesces to the appointment of a trustee, receiver, or liquidator of all or a substantial part of Contractor’s assets; or makes any general assignment for the benefit of creditors.



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- Contractor violates any federal, state, or local law, rule, regulation, or ordinance related to this Contract and the violation continues for ten (10) days after notice from the City.

19.1 Upon the occurrence of any breach by Contractor, the City may elect to do any or all the following at one time or over a period of time:

- File a civil action or actions to, among other things, enforce this Contract and recover all amounts due, all attorney fees, court costs, and other expenses incurred.
- Exercise any and all remedies allowed at law or in equity.
- Recover all attorney fees, court costs, and other expenses incurred, whether or not a civil action or other judicial proceeding is filed.

19.2 The City's exercise of any remedy does not terminate and shall not be construed to terminate this Contract. Termination of this Contract must be evidenced by a writing signed by the City for that purpose. The foregoing list of remedies is not exhaustive, and the rights and remedies of the City under this Contract are non-exclusive.

20. CLAIMS AGAINST THE CITY: Contractor shall comply with the procedures set forth in Chapter XVIII, § 14 of the Charter of the City of Phoenix (claims or demands against the City) and A.R.S. § 12-821 and § 12-821.01 (notice of claim statutes) for presenting claims or demands against the City. Nothing in this Contract constitutes a Contractual term that requires a dispute resolution process, an administrative claims process, or review process, as those terms are used in A.R.S. § 12-821.01(C), so as to affect the date on which a cause of action accrues under A.R.S. § 12-821.01(A) and (B).

21. DELINQUENT ACCOUNT FEE: Any amount that is not paid by Contractor when due is deemed delinquent. If the delinquent amount remains unpaid for ten (10) days, then a delinquent account fee of eighteen percent (18%) per annum shall be assessed according to Phoenix City Code § 4-7. Delinquent account fees shall be computed and accrued on a daily basis and assessed until the account balance, including delinquent account fees, is paid in full. Delinquent account fees are due from Contractor upon demand by the City.

22. ENTIRE AGREEMENT: This Contract constitutes the entire agreement between the parties and supersedes all prior written and oral agreements, understandings, discussions, proposals, negotiations, communications, representations, and correspondence related to this Contract. The parties are not bound by any obligation not provided for in this Contract. Contractor certifies that it was not induced to enter into



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this Contract by any misrepresentation, undue influence, or coercion by the City or any of its officers, officials, agents, or employees. The Exhibits attached to this Contract are material parts of this Contract and are incorporated herein by this reference.

- 23. FAIR INTERPRETATION:** Contractor agrees that the rule that ambiguous or vague language in a Contract is construed against the drafter is waived and does not apply to this Contract. Contractor agrees that this Contract shall be interpreted fairly and not against the City simply because the City drafted this Contract.
- 24. NO THIRD-PARTY BENEFICIARIES:** Except as expressly provided in this Contract, nothing contained herein creates or may be construed to create any right or privilege in any person or entity that is not a party to this Contract.
- 25. NOTICE:** All notices, consents, approvals, and other communications (notices) between the City and Contractor that are required to be given under this Contract shall be in writing and given by (A) personal delivery, (B) email with return receipt requested (read receipt), (C) facsimile transmittal with delivery confirmation, (D) prepaid delivery to any commercial air courier or express delivery service, or (E) registered or certified mail, postage prepaid and return receipt requested, through the United States Postal Service.

Notices to the City shall be sent to:

City of Phoenix
Aviation Headquarters
ATTN: Contracts & Services Division
2485 E Buckeye Rd
Phoenix, AZ 85034
Facsimile: 602-273-2080

City of Phoenix
Aviation Headquarters
ATTN: Donald Mayes
Equal Opportunity Department
2485 E Buckeye Rd
Phoenix, AZ 85034

Notice to Contractor shall be sent to the person at the mailing address, email address, or fax number listed by Contractor in its Offer in Section VI – Submittals of this Contract.

Notice given in compliance with this Section is deemed received (A) on the day it is personally delivered, (B) on the day it is sent by email, (C) on the day it is sent by facsimile transmittal, (D) two (2) days after it is deposited with any commercial air courier or express delivery service, or (E) five (5) days after it is sent by registered or



certified mail as provided above. Any time period stated in a notice shall commence on the date the notice is deemed received. Actual receipt is not required.

If notice is sent by email or facsimile transmittal, then a paper copy shall be sent by prepaid regular first-class mail through the United States Postal Service to the Party at the address listed above. Duplicate notice is merely a courtesy and does not change or extend the effective date of the notice. The failure to receive the duplicate notice does not affect the validity of the notice sent by email or facsimile transmittal.

26. TITLE VI SOLICITATION NOTICE: The City of Phoenix, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any Contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession 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.



SECTION III – SPECIAL TERMS AND CONDITIONS

1. **TERM OF CONTRACT:** The term of this Contract will commence on or about **July 1, 2022** and will continue for a **period of five (5) years** thereafter.
2. **PRICE:** All prices offered shall be firm and fixed for the entire term of the Contract.
3. **METHOD OF ORDERING:** Contractor shall deliver items and/or services only upon receipt of a written purchase order. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.
4. **METHOD OF INVOICING:** Invoice must be emailed in .pdf format to invoices@phoenix.gov and must include the following:
 - City purchase order number or shopping cart number
 - Items listed individually by the written description and part number.
 - Unit price, extended and totaled.
 - Quantity ordered, back ordered, and shipped.
 - Applicable tax
 - Invoice number and date.
 - Delivery address.
 - Payment terms.
 - FOB terms.
 - Remit to address
5. **METHOD OF PAYMENT:** Payment to be made from Contractor's invoice and a copy of the signed services invoices submitted to cover items received and accepted during the billing period.
6. **PARTIAL PAYMENTS:** Partial payments are authorized on individual purchase orders. Payment will be made for actual goods and services received and accepted by the City.
7. **SUPPLIER PROFILE CHANGES:** It is the responsibility of the Contractor to promptly update their profile in procurePHX at www.phoenix.gov/procure. If Contractor's legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and Contract termination.
8. **ESTIMATED QUANTITIES OR DOLLAR AMOUNTS (REQUIREMENTS CONTRACTS ONLY):** Quantities and dollar amounts listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during the period of this agreement, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting Contract is to supply the City with its complete actual requirement for the Contract period.



- 9. AUTHORIZED CHANGES:** The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within thirty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Deputy Aviation Director or Aviation Department Director prior to the institution of the change.
- 10. SUSPENSIONS OF WORK:** The Procurement Officer and the project manager reserve the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the Contract completion/delivery requirements.
- 11. HOURS OF WORK:** All work under this Contract shall be coordinated with the City's project manager. Any changes to the established schedule must have prior written approval by the City's project manager.
- 12. POST AWARD CONFERENCE:** A post-award conference will be held by the Procurement Officer or project manager prior to commencement of any work on the project. The purpose of this conference is to discuss critical elements of the work schedule and operational problems and procedures.
- 13. PERFORMANCE INTERFERENCE:** Contractor shall notify the City's department contact immediately of any occurrence and/or condition that interferes with the full performance of the Contract and confirm it in writing within 24 hours.

DR: Contact: Donald Mayes

Phone: (602) 262-7502

- 14. ADVERTISING:** Contractor will not advertise or publish news releases concerning this Contract without the prior written consent of the Deputy Aviation Director or Aviation Department Director, and the City will not unreasonably withhold permission.
- 15. EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports, and other deliverables which may be created under this Contract are the sole property of the City of Phoenix and will not be used by the Contractor or any other person except with prior written permission by the City.
- 16. STRICT PERFORMANCE:** Failure of either party to insist upon the strict performance of any item or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services,



obligations imposed by this Contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

17. LICENSES AND PERMITS: Contractor will keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.

18. DELIVERY/SERVICE TICKET: Contractor shall provide a packing list or service ticket for items delivered to the City or services provided to the City. Tickets should include the following and a legible copy shall be provided to the City:

- Date
- City purchase order number
- Written description of services which were provided
- Itemized list of materials which were delivered, including quantity
- A unique identification number and Contractor name
- Signature of City employee who accepted for the materials/services

19. MISCELLANEOUS FEES: Additional charges for fuel surcharges, delivery charges, dealer prep, environmental fees, waste disposal, shop supplies, set-up, freight and/or shipping and handling, etc. will not be paid. These costs must be incorporated in the pricing provided in the bid price schedule. Labor rates (Shop and On-site) shall be charged as a flat hourly rate and are allowed only in performance of services under this agreement. Travel hours and other incidental fees will not be permitted under this agreement. Labor hours will be from “check-in” to “check-out” at the worksite.

20. DEMONSTRATION: The City may, in its discretion, require a demonstration of the products or services offered as part of the evaluation process. The demonstration shall be provided by the Contractor at no cost to the City for the period deemed sufficient to properly evaluate the product or service. The exact time, conditions, and terms of the evaluation shall be established at the time a demonstration is requested.

21. TRANSITION OF CONTRACT: Contractor will, without limitation, provide important information to a successor Contractor and the City to ensure continuity of service at the required level of proficiency and agrees to provide to the City all files, supplies, data, records, and any other properties or materials of the City, which the City owns or has rights to pursuant to this Contract and which are in the possession of Contractor. The provisions of this section will survive the expiration or termination of this Contract.

22. BACKGROUND SCREENING:

Contractor agrees that all Contractor and subcontractors’ workers (collectively “Contract Worker(s)”) pursuant to this Agreement will be subject to background and security checks and screening (collectively “Background Screening”) at Contractor’s sole cost and expense, unless otherwise provided for in the scope of work. Contractor’s



background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare. The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.

22.1 Background Screening Risk Level: The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional Contract costs to obtain background screens or badges.

22.2 Terms of This Section Applicable to all Contractor's Contracts and Subcontracts: Contractor will include Contract Worker background screening in all Contracts and subcontracts for services furnished under this agreement.

22.3 Materiality of Background Screening Requirements; Indemnity: The background screening requirements are material to City's entry into this agreement and any breach of these provisions will be deemed a material breach of this Contract. In addition to the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor's services under this Agreement or Contractor's failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.

22.4 Continuing Duty; Audit: Contractor's obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor's records.

22.5 Variances and Exemptions: Contract Workers who fall under the following areas may be considered exempt from this policy:

- Federal Homeland Defense Bureau.
- Transportation Security Administration.
- Federal Aviation Administration.
- Department of Public Safety (DPS) Administration – presenting a current Level One Department of Public Safety fingerprint card.
- Arizona or other State Bars.



- Other background checks performed within the last three to five years may be approved if they fit all required criteria herein, at the City’s discretion.

22.6 Contractor’s Default; Liquidated Damages; Reservation of Remedies for Material Breach: If Contractor is required to access any City facilities without an escort, City badging is required. Contractor’s default under this section will include, but is not limited to, the following:

- Contract Worker gains access to a City facility(s) without the proper badge or key;
- Contract Worker uses a badge or key of another to gain access to a City facility;
- Contract Worker commences services under this agreement without the proper badge, key or background screening;
- Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable background screening; or
- Contractor fails to collect and timely return Contract Worker’s badge or key upon termination of Contract Worker’s employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement.
- Contractor acknowledges and agrees that the access control, badge and key requirements in this section are necessary to preserve and protect the public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this section within three business days (excluding weekends and City holidays) from the date notice of default is sent by the City. The parties agree that Contractor’s failure to properly cure any default under this section will constitute a breach of this section. In addition to any other remedy available to the City at law or in equity, the Contractor will be liable for and pay to the City the sum of \$1,000.00 for each breach by Contractor in this section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this agreement if Contractor breaches this section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City’s actual damages if Contractor breaches this section. The parties further agree that three breaches by Contractor in this section arising out of any default within a consecutive period of three months or three breaches by Contractor in this section arising out of the same default within a period of 12 consecutive months will constitute a material breach of this agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this agreement, at law and in equity including, but not limited to, termination of this agreement.



22.7 Employee Identification and Access: Contract Workers are forbidden access to designated restricted areas. Access to each building will be as directed by the authorized Phoenix authorized representative. Contract Workers are not authorized access other than during scheduled hours. Access to the building will be directed by the City's authorized representative.

Only authorized Contract Workers are allowed on the premises of the City facilities/buildings. Contract Workers are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contract Worker.

Unless otherwise provided for in the scope of work:

- Contract Workers must **always** have city issued badges and some form of verifiable company identification (badge, uniform, employee id).
- Contractor will supply a list of the names and titles of all employees requiring access to the buildings. It is the Contractor's responsibility to provide updates and changes of personnel as necessary.

22.8 Key Access Procedures: If the Contractor Worker's services require keyed access to enter a City facility(ies), a separate key issue/return form must be completed and submitted by the Contractor for each key issued. Contractor must submit the completed key issue/return form to the appropriate badging office.

22.9 Stolen or Lost Badges or Keys: Contractor must immediately report lost or stolen badges or keys to the City's appropriate badging office. If the badge/key was stolen, Contract Worker's must report the theft to their local police department. Prior to issuance of a new badge or key, a new badge application or key issue form must be completed, submittal of a police department report for stolen badges, and applicable payment of the fee(s) listed herein.

22.10 Return of Badge or Key: All badges and keys are the property of the City and must be returned to the City at the badging office within one business day (excluding weekends and City holidays) of when the Contract Worker's access to a City facility is no longer required to furnish the services under this agreement. Contractor will collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contractor Worker's services are no longer required at a City facility(s); or upon termination, cancellation or expiration of this agreement.

22.11 Badge and Key Fees: The following constitute the badge and key fees under this agreement. The City reserves the right to amend these fees upon a 30-day prior written notice to Contractor.

Replacement Badge Fee: \$55.00 per badge



SECTION III – SPECIAL TERMS AND CONDITIONS

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Lost/Stolen Badge Fee:	\$55.00	per badge
Replacement Key Fee:	\$55.00	per key
Replacement Locks:	\$55.00	per lock

23. BACKGROUND SCREENING – STANDARD RISK: The current risk level and background screening required is **STANDARD RISK LEVEL**. A standard risk background screening will be performed when the Contract Worker’s work assignment will:

- require a badge or key for access to City facilities; or
- allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
- allow unescorted access to City facilities during normal and non-business hours.

23.1 Requirements: The background screening for this standard risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker’s proposed date of hire.

23.2 Contractor Certification; City Approval of Background Screening: Unless otherwise provided for in the Scope, Contractor will be responsible for:

- determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,
- for reviewing the results of the background check every five years; and,
- to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- Submitting the list of qualified Contract Workers to the Contracting department.
- For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the Contract and for whom the requirements of the Agreement apply.
- By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all background screening requirements for the standard risk background screening, and verified legal worker status, as required.

24. CONFIDENTIALITY AND DATA SECURITY: All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Agreement is confidential, proprietary information owned by the City, unless otherwise agreed upon within this Agreement. Except as



specifically provided in this Agreement, the Contractor shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager or his/her designee.

Contractor agrees to abide by all current applicable legal and industry data security and privacy requirements and to notify the City immediately if the scope of work changes or personal identifying information or information subject to Payment Card Industry Standards becomes part of the Agreement.

Contractor agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely. Additionally, Contractor/Consultant will follow industry recognized security frameworks as part of their security program covering infrastructure, applications, operations, policy and procedure. This can include ISO/IEC 27001, Nist Cyber Security Framework or SP 800-53.

A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

The obligations of Contractor/Consultant under this Section shall survive the termination of this Agreement.

25. SECURITY INQUIRIES: Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor's expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City Contracts or engagements without the City's prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

- require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. 41-1750 (G) (4);
- act on newly acquired information whether or not such information should have been previously discovered;



- unilaterally change its standards and criteria relative to the acceptability of Contractor’s employees and/or prospective employees; and
- object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Agreement. Contractor will bear the costs of all inquiries requested by the City.

26. AVIATION SECURITY PROCEDURES CONTRACTOR AND SUBCONTRACTOR WORKER BACKGROUND SCREENING

Contract Worker Background Screening: Contractor agrees that all Contract workers and subcontractors (Contract Workers) that Contractor furnishes to the City pursuant to this Contract shall be subject to background and security checks and screening (Background Screening). Contractor shall pay for all costs related to Background Screening, unless otherwise expressly provided in the Scope of Work. Contractor further agrees that the Background Screening required in 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 in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of Contractor’s services under this Contract or Contractor’s failure to comply with this Section. Therefore, in addition to the specific 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 services under this Contract.

26.1 Background Screening Requirements and Criteria: Contractor agrees that it will verify legal Arizona worker status as required by Arizona Revised Statutes (A.R.S.) § 41-4401. Contractor further agrees that it will conduct a background check for real identity and legal name on all Contract Workers prior to proposing the Contract Worker to the City.

26.2 Additional City Rights Regarding Security Inquiries: In addition to the foregoing, the City reserves the right, but not the obligation, to:

- 26.2.1** Have a Contract Worker be required to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4) or Phoenix City Code § 4-22 or both;
- 26.2.2** Act on newly acquired information, whether or not such information should have been previously discovered;
- 26.2.3** Unilaterally change its standards and criteria relative to the acceptability of Contract Workers; and
- 26.2.4** Object, at any time and for any reason, to a Contract Worker performing work, including supervision and oversight, under this Contract.



26.3 Contractor Certification: By executing this Contract, Contractor certifies and warrants 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 and current. A Contract Worker rejected for work under this Contract shall not be proposed to perform work under any other City Contract or engagement without the City's prior written approval.

26.4 Terms of This Section Applicable to all of Contractor's Contracts and Subcontracts: Contractor shall include the terms of this Section for Contract Worker Background Screening in all Contracts and subcontracts for services furnished under this Contract, including supervision and oversight services.

26.5 Materiality of Background Screening Requirements; Indemnity: The Background Screening requirements of this Section are material to the City's entry into this Contract and any breach of this Section by Contractor shall be deemed a material breach of this Contract. In addition to the indemnity provisions set forth in this Contract, Contractor shall defend, indemnify, and hold harmless the City for any and all Claims (as defined in Section II, 6.3) arising out of this Background Screening section including the disqualification of a Contract Worker by Contractor or the City for failure to satisfy this Section.

26.6 Continuing Duty; Audit: Contractor's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Contract. Contractor shall notify the City immediately of any change to a Background Screening of a Contract Worker previously approved by the City. 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 Contract.

27. CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENTS: A CONTRACT WORKER SHALL NOT BE ALLOWED TO BEGIN WORK ON AIRPORT PROPERTY WITHOUT THE CONTRACT WORKER'S RECEIPT OF A CITY-ISSUED BADGE. A BADGE WILL BE ISSUED TO A CONTRACT WORKER SOLELY FOR ACCESS TO THE AREAS OF THE AIRPORT TO WHICH THE CONTRACT WORKER IS ASSIGNED. EACH CONTRACT WORKER WHO ENTERS AIRPORT PROPERTY MUST USE THE BADGE ISSUED TO THE CONTRACT WORKER.

27.1 Badges: Upon notification from Contractor's authorized agent, the Contract Worker will proceed to the Badging Office for processing and issuance of a badge. The City will not process the badge until the Contract Worker satisfies the Background Screening requirements. The Contract Worker shall comply with all requirements and furnish all information requested by the Badging Office. All fees associated with security badging will be assessed in compliance with



Phoenix City Code § 4-22. Current badging procedures and fees are available for review at <https://www.skyharbor.com/security/BadgingInformation>.

27.2 Key Access Procedures: If a Contract Worker's services require keyed access to enter a City facility, a separate key issue and return form must be completed and submitted to the City project manager by Contractor for each key issued.

27.3 Stolen or Lost Badges or Keys: Contractor shall immediately report lost or stolen badges or keys to the City. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

27.4 Return of Badges or Keys: All badges and keys are the property of the City and must be returned to the City at the Badging Office within one (1) business day after the Contract Worker's access to a City facility is no longer required to furnish the services under this Contract. Contractor shall collect a Contract Worker's badge and all keys (1) upon the termination of the Contract Worker's employment, (2) when the Contract Worker's services are no longer required at a City facility (3), and upon termination, cancellation, or expiration of this Contract.

27.5 Contractor's Default; Liquidated Damages; Reservation of Remedies for Material Breach: Contractor's default under this Section shall include the following:

27.5.1 A Contract Worker gains access to a City facility without the proper badge or key;

27.5.2 A Contract Worker uses another person's badge or key to gain access to a City facility;

27.5.3 A Contract Worker commences services under this Contract without the proper badge, key, or Background Screening;

27.5.4 A Contract Worker or Contractor submits false, incomplete, or misleading information or negligently submits incorrect information to the City to obtain a badge, key, or applicable Background Screening; or

27.5.5 Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility, or upon the expiration, cancellation, or termination of this Contract. Contractor acknowledges and agrees that the access control, badge, and key requirements in this Section are necessary to preserve and protect public health, safety, and welfare. Accordingly, Contractor agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. Contractor's failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, Contractor shall



SECTION III – SPECIAL TERMS AND CONDITIONS

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be liable for and shall pay to the City the sum of \$1,000.00 for each breach by Contractor of this Section. The parties agree that the foregoing amount is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Contract in the event that Contractor breaches this Section. Further, the parties agree to the foregoing amount because of the difficulty of proving the City's actual damages in the event Contractor breaches this Section. The parties further agree that three (3) breaches of this Section by Contractor within a three-month period of time or three (3) breaches by Contractor of this Section arising out of the same default within a period of twelve (12) consecutive months shall constitute a material breach of this Contract by Contractor and the City expressly reserves all of its rights, remedies, and interests under this Contract at law and in equity, including termination of this Contract.



SECTION IV – INSURANCE AND INDEMNIFICATION

1. **DEFENSE AND INDEMNIFICATION CLAUSE:** Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the work performed by Indemnitor or Indemnitor’s Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

2. **CONTRACTOR’S INSURANCE:** 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 subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

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

- 2.1. **SCOPE AND LIMITS OF INSURANCE:** Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of



SECTION IV – INSURANCE AND INDEMNIFICATION

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coverage below are met.

2.1.1. Commercial General Liability – Occurrence Form

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

- Policy must not contain any exclusions for operations on or near airport premises.
- The policy must cover liability arising out of the work product defined in the scope of services in this Contract.
- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured Contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

2.1.2. Automobile Liability

Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- Policy must not contain any exclusions for operations on or near airport premises.
- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, relating to this Contract.



SECTION IV – INSURANCE AND INDEMNIFICATION

CITY OF PHOENIX

- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

2.1.3. Worker’s Compensation and Employers’ Liability

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

- Policy must contain a waiver of subrogation against the City of Phoenix.
- 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 executes the appropriate sole proprietor waiver form.

2.2. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to **City of Phoenix, Aviation Department, Contracts & Services Division, 2485 E Buckeye Rd, Phoenix, AZ 85034.**

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

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

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material



SECTION IV – INSURANCE AND INDEMNIFICATION

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breach of Contract.

The initial certificates required by this Contract shall be sent directly to:

City of Phoenix
Aviation Department
Contracts & Services Division
2485 E Buckeye Rd
Phoenix, AZ 85034

All subsequent and renewal certificates of insurances and endorsements shall be sent directly to:

City of Phoenix
Aviation Department
c/o EXIGIS Insurance Compliance Services
PO Box 4668 – ecm #35050
New York, NY 10163-4668
certificates-cityofphoenix@riskworks.com

The City project/Contract number and project description must 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.**

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



SECTION V – SCOPE OF WORK

- 1. INTRODUCTION:** The City of Phoenix Equal Opportunity Department (EOD) is seeking a responsible, experienced, and qualified vendor to provide Airport Federal Aviation Administration (FAA) Concessions Consultant services. The Contractor will perform any or all of the following services for the City's Airport Concessions Disadvantaged Business Enterprise (ACDBE), Disadvantaged Business Enterprise (DBE), and Airport Concession Employee Retention Programs. All services will be conducted on an as-needed basis and at the direction of designated City staff.
- 2. BACKGROUND:** Since Phoenix Sky Harbor International Airport (Airport) is a large hub primary airport, it is required to have an ACDBE program. As a condition of eligibility for FAA financial assistance, the City is required to submit its ACDBE program and overall goals to the FAA every three (3) years. The City of Phoenix (City) has established ACDBE and DBE programs in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 Code of Federal Regulations (CFR) Part 23 and Part 26. PHX is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The City has signed airport grant assurances that it will comply with 49 CFR Part 23. The EOD Director has been delegated as the DBE Liaison Officer (DBELO). In that capacity, the EOD Director is responsible for implementing all aspects of the DBE and ACDBE programs. Implementation of the DBE and ACDBE programs are accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the USDOT.
- 3. MINIMUM QUALIFICATIONS:** Offerors not meeting the below minimum qualifications in full will be deemed non-responsive.

 - 3.1.** Offeror must have a minimum of three (3) years of experience in the last five (5) years providing DBE and ACDBE Consulting Services for a large hub primary airport.
 - 3.2.** Offeror must have experience working in an official capacity with the U.S. Department of Transportation, Federal Aviation Administration (FHA), Federal Transit Administration (FTA), and Federal Highway Administration (FHA) through an established contract / agreement or some other verifiably official means.
 - 3.3.** Offeror must have participated working on a minimum of two (2) DBE/ACDBE/Small Business Enterprise disparity studies.
- 4. DEPARTMENT REPRESENTATIVE (DR):** The DR for this Contract is Donald Mayes. The DR or designee will coordinate all work and will be the sole judge concerning acceptability and quality of work. The DR or designee will be consulted on any concerns and issues arising during performance.



5. GENERAL REQUIREMENTS

- 5.1** The Contractor shall assist with development of the Airport’s Triennial ACDBE overall goal based on analysis of available opportunities and qualified ACDBE firms available for participation. Goal development includes, but is not limited to, obtaining comparative data from other similar projects, interaction with Regional FAA Civil Rights Officers, and organizing and conducting a stakeholder/public participation meeting.
- 5.1.1** All work associated with development of the Airport’s Triennial ACDBE goal will be at the direction of the DR. The City anticipates that the next Triennial ACDBE goal process will begin in 2023.
- 5.2** In collaboration with the City and the DR, the Contractor shall review and update the Airport’s existing DBE and ACDBE local programs to ensure compliance with CFR Title 49, Part 23 and Part 26.
- 5.3** The Contractor shall assist in reviewing subcontract agreements, subleases, and joint venture (JV) agreements to ensure DBE and ACDBE compliance as required by CFR Title 49, Part 23 and Part 26.
- 5.4** The Contractor will perform Contract audits monthly to verify that prime firms are in compliance with the Airport’s DBE and ACDBE programs. The Contractor will notify the City of any non-compliance and submit recommendations for remedy or sanctions. The Contractor shall ensure that records meet the requirements of FAA auditors and are compliant with CFR Title 49, Part 23 and Part 26.
- 5.5** The Contractor shall maintain all records in EOD’s concessions database for the duration of the Contract, including DBE and ACDBE programs administration files and DBE and ACDBE goal establishment files. All such files must be completely updated and turned over to the City no later than the last date of the Contract. The Contractor shall ensure that records meet requirements of FAA auditors and are compliant with CRF Title 49, Part 23 and Part 26.
- 5.6** The Contractor shall ensure files and records are organized, well maintained, and accurate. The Airport will run regular reports from EOD’s concessions database and will rely on the accuracy of the information entered into the database.
- 5.7** The Contractor shall assist the City in the preparation of various forms of communications (e.g. emails, letters, teleconferences, documents, etc.) in response to requests from the FAA, on an as-needed basis and at the direction of the DR or designee.



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

- 5.8 Standard response time for all requests related to the DBE and ACDBE concessions programs will not exceed 48 hours, unless otherwise stated or approved by the DR or designee.
- 5.9 The Contractor must provide all labor, material, and equipment necessary to provide Airport FAA Concessions Consulting.
- 5.10 The Contractor must have a physical presence at the Airport when necessary to perform any site visits and JV agreement reviews as required in relation to this Scope of Work.
- 5.11 The Contractor must stay current with all FAA guidance concerning DBE and ACDBE Program requirements.

6. SUPPLEMENTAL REQUIREMENTS (DBE AND ACDBE PROGRAMS)

- 6.1 The Contractor must conduct review of JV agreements and associated documentation to confirm ACDBE participation in accordance with 49 CFR part 23 and part 26 and FAA JV Guidance.
- 6.2 The Contractor must collect necessary information from Concessionaire's (JV, prime, subcontractors) on behalf of the City to conduct JV reviews. Necessary JV information will include, but not be limited to, agreements, leases, meeting minutes, tax forms, balance sheets, distribution payments, ACDBE loan payments to concessionaires, management fees, and all other documents related to agreements and operations.
- 6.3 The Contractor must conduct on-site monitoring visits of JV and ACDBE concessions per direction of DR or designee as necessary to determine if ACDBE firm(s) and prime concessionaire(s) are participating in the operation as described in the JV Agreement and in compliance with the Airport's DBE and ACDBE Program.
- 6.4 The Contractor must ensure accuracy and completeness of all ACDBE program information related to payments to ACDBE subcontractors and partners.
- 6.5 The Contractor must notify the City of any ACDBE firm(s) or prime concessionaire(s) not in compliance with applicable FAA rules, regulations, and guidance and submit recommendations to the City for remedy and sanctions.
- 6.6 The Contractor must process ACDBE certification applications and annual updates on an as-needed basis.



7. AIRPORT EMPLOYEE RETENTION PROGRAM:

7.1 The Airport Employee Retention Program is as follows:

“Aviation is dedicated to exceptional customer service and will require the Successful Contractor to operate the concession space in an efficient, customer friendly, well-run manner to meet the needs of customers.

Existing concession employees who have worked at the Phoenix Sky Harbor International Airport (PHX) have developed invaluable knowledge and experience regarding airport operations and the professional handling of conditions specific to an airport, such as sudden influxes of customers during peak period of the day, changes in airline schedules, impact of weather conditions, etc.

The Successful Contractor, subcontractors, and/or joint venture partners must hire from the pool of current PHX concession employees who are employed by the PHX concessionaire and retain those concession employees in similar job classifications for 120 days.

The Successful Contractors, subcontractors, and/or joint venture partners may only interview employee candidates outside of this group of PHX concession employees when there are no longer any employees of the current PHX concessionaires available to hire in similar job classifications.”

7.2 The Contractor must adhere to the following Airport Employee Retention Program requirements as follows:

7.2.1 Maintain a web-based tracking system to register employees, track employee retention, and generate reports in accordance with the Airport Employee Retention Program.

7.2.2 Review employee retention plans submitted by contractor(s) and/ subcontractor(s) to ensure compliance with the Airport Employee Retention Program.

7.2.3 Collect relevant information from concessionaires and employees of concessionaires to enter the information into the tracking system. This information will include the name, contact information, job classifications, and pay rate of employees that will be displaced by concessionaires with expiring or terminated Contracts.

7.2.4 Assist successful Offerors in developing lists of current Airport concessionaire employees for interviews based on job classifications. Monitor interviews and



hires from the pool of current employees and determine the number of hires for each successful contractor and/or subcontractor eligible to be counted under the Airport Employee Retention Program.

7.2.5 Track the movement of employees displaced by concessionaires with expired or terminated contracts in accordance with the Airport Employee Retention Program.

7.2.6 Monitor the hiring of employees, displaced by out-going concessionaires, by newly awarded concessionaires in accordance with the Airport Employee Retention Program.

7.2.7 All data associated with the Airport Employee Retention Program collected and tracked over the course of the Contract must be returned to the City no later than the last day of the Contract.

8. REPORTS AND ANALYSES:

8.1 As part of the Airport's Triennial ACDBE goal development and at request of the DR or designee, review the City's ACDBE Program Plan and make recommendations for changes or revisions as needed to ensure compliance with 49 CFR Part 23 and Part 26.

8.2 Conduct surveys and analysis of trends in the airport concession industry on an as-needed basis. Timelines are set by the DR or designee and are subject to change.

8.3 During the period of transition from an out-going concessionaire to the newly awarded concessionaire, provide a weekly report for each concessionaire's compliance with employee retention policies and procedures.

8.4 During the period of transition from an out-going concessionaire to the newly awarded concessionaire, provide a weekly report detailing the interviews and hiring activities of each concessionaire.

8.5 Provide ad-hoc reports related to the City's DBE and ACDBE Program and Airport Employee Retention Program at the City's request in the prescribed manner within the established timeline and parameters. Timelines and parameters are set by the DR or designee and are subject to change.

9. ADDITIONAL WORK AND PROCESS IMPROVEMENT

9.1 The City may request the Contractor to complete additional consulting services related to the DBE and ACDBE Programs and the Employee Retention Program as deemed necessary by the DR. All additional work completed under this Contract will be completed at the standard hourly rate defined in Section VI – Submittals, Paragraph 4. Price Schedule.



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

9.2 The Contractor may identify and propose process improvements, enhancements, and procedural or technical innovations to City processes related to the DBE and ACDBE Programs and the Employee Retention Program. All changes to City processes will be at the discretion and approval of the DR. All work completed to develop process improvements must be approved in advance by the DR to be eligible for payment by the City. All work completed to develop process improvements will be completed at the standard hourly rate defined in Section VI – Submittals, Paragraph 4, Fee Schedule.

10. REIMBURSABLE EXPENSES: Pre-approved reimbursable expenses, if applicable, will be reimbursed with no additional charges for overhead, benefits, or administrative support. All reimbursable expenses must be pre-approved by the DR and the Aviation Director, in writing, and must be reasonable and prudent. Travel will be reimbursable for Aviation projects that require travel. Travel will only be reimbursable with prior DR and Aviation designee approval.

Contractor must comply with the City of Phoenix Administrative Regulation 3.41, Revised – Business, Conference and Training Travel and Related Expenses (Effective Date: January 16, 2015), as to the eligible and ineligible expenses for reimbursement and required documentation.

www.phoenix.gov/citymanagersite/Documents/Ethics/ar341.pdf

11. SUBCONTRACTING

11.1 Contractor must obtain approval from the DR or designee prior to any subcontracting work being performed. The Aviation Department reserves the right to check the subcontractor's background and make a determination to approve or reject the use of the submitted subcontractor(s).

11.2 Contractor will be responsible for all payments to the subcontractor, including, but not limited to, labor and materials incurred from subcontracting the services to other companies and vendors.

11.3 Subcontractors providing service under this Contract will meet the same service requirements and provide the same quality of service required of the Contractor.

11.4 No subcontract under this Contract shall relieve the Contractor of responsibility of service. The Contractor shall manage all schedules, quality, performance and project management for subcontractors. Contractor will be held solely responsible and accountable for the service for which the Contractor subcontracted.

11.5 The City reserves the right to have the Contractor remove the subcontractor or any of the subcontractor's staff deemed unsatisfactory.



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

11.6 Contractor is responsible to ensure that any and all subcontractors possess all valid certifications and licenses required by federal, state, or local laws to perform any work related to this Contract prior to the start of work.

12. EVALUATION CRITERIA: In accordance with Administrative Regulation 3.10, Competitive Sealed Proposal awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the City based upon the evaluation criteria listed below. The evaluation factors are listed in the relative order of importance and more details are provided in Section V – Scope of Work.

A.	Qualifications and Experience	0 - 450 Points
B.	Method of Approach	0 - 350 Points
C.	Price Schedule	0 - 200 Points
Total Available Points:		1000 Points Maximum

12.1 Qualifications and Experience

12.1.1 Qualifications and Experience of Firm (Tab 1 – 450 Points): Offerors must include a narrative statement detailing their background, experience, and qualifications as it relates to their experience with Airport FAA Concessions Consultant. This must include the following:

- Name of firm or organization
- Number of years in business
- Description of Offeror’s organizational or business structure (corporation, partnership, joint venture, partnership, sole proprietorship) including:
 - state of incorporation
 - the executive team
 - any substantive changes to the corporate structure within the previous five (5) years
 - number of employees
- Descriptions of current overall business operations
- Organizational chart
- Description of previous experience (minimum three (3) years) providing DBE consulting services at other Airports and details about the specific services provided.
- Description of previous experience (minimum three (3) years) providing ACDBE consulting services at other Airports and details about the specific services provided.
- Provide three (3) large hub primary airport references that are of similar size to Phoenix Sky Harbor International Airport for which the



SECTION V – SCOPE OF WORK

CITY OF PHOENIX

Offeror must have provided service to in the past three (3) years. Please provide the following for each reference:

- point of contact (name, address, phone number, and email)
- a description of the services provided
- dates the services were provided
- operating budget
- compensation

12.1.2 Qualifications and Experience of Key Personnel: Offeror must include a narrative statement of the proposed key personnel to be assigned to this Contract detailing their background, experience, and qualifications as it relates to their experience with Airport FAA Concessions Consultant. This must include the following:

- Names of each key personnel assigned to this Contract
- Contact information
- Resumes
- Specific roles and participation for each key personnel
- Staffing model and plan to provide the services in this Scope of Work

12.2 Method of Approach (Tab 2 – 350 Points): Offeror must provide a statement detailing its method of approach to satisfy the requirements of the Scope of Work in narrative form and including a detailed approach and methodology for the following:

12.2.1 Describe in narrative form the approach to complete the work specified in the Scope of Work. Outline sequentially the activities that would be undertaken in completing the services and specify who would perform the hours anticipated for each project. The approach to the work plan shall be of such detail to demonstrate the Offeror's ability to accomplish the project objectives, which may include, but is not limited to the following:

- Airport Triennial ACDBE Goal Development (Sections 5.1 and 8.1 of the Scope of Work)
- DBE and ACDBE Compliance Review (Section 5.3 of the Scope of Work)
- Airport Employee Retention Program (Section 7 of the Scope of Work)

12.2.2 Identify methods the Offeror will use to ensure quality control as well as budget and schedule control for the project.

12.3 Price Schedule (Tab 3 – 200 Points):

12.3.1 The pricing evaluation will be based on the Offeror's submission of section



SECTION V – SCOPE OF WORK

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4. Price Schedule in Section VI – Submittals.

12.3.2 Offerors must list the hourly rate for the Consultant and up to a maximum of four (4) key personnel staff required to complete the services as listed under the Scope of Work requirements.

12.3.3 Estimated Annual Quantity: 400 total hours

12.3.3.1 The Estimated Annual Quantity is merely a forecast and the above estimate does not obligate the City to guarantee any certain minimum quantity (see Section III – Special Terms and Conditions, paragraph 8. Estimated Quantities or Dollar Amounts). The City will utilize this Contract on an as-needed basis.

12.3.4 For physical offers (in-person / mailed), this tab must include a hard copy **and** electronic copy (portable drive). Both the hard copy **and** electronic copy must be submitted in a separate, sealed, opaque envelope from the rest of the submission documents.

For electronic offers (emailed), this tab must be a separate file in a folder separate from the rest of the offer documents.



SECTION VI – SUBMITTALS

1. OFFER SUBMISSION: Only select from one of the below methods to submit your offer. For both methods, refer to paragraph 12 “Submission of Offer” of Section I – Instructions for detailed instructions. This offer will remain in effect for a period of 180 calendar days from the opening date and is irrevocable unless it is in the City’s best interest to release the offer.

1.1 Hard Copy Offer (In-Person / Mailed)

1.1.1 Submit one original and one electronic copy (portable drive).

1.1.2 Only submit the Submittal Section. **Do not submit a copy of the entire solicitation document.**

1.2 Electronic Offer (Emailed)

1.2.1 Must be emailed to avn.solicitations@phoenix.gov and copy kyle.brack@phoenix.gov.

1.2.2 Only submit the Submittal Section. **Do not submit a copy of the entire solicitation document.**

2. OFFER SUBMITTAL FORMAT:

The written offer should be:

- Typewritten for ease of evaluation;
- Signed by an authorized representative of the Offeror;
- Submitted with contact information for the individual(s) authorized to negotiate with the City;
- Submitted with a table of contents and tabbed per the following major sections:

Tab 1 Qualifications and Experience

Tab 2 Method of Approach

Tab 3 Price Schedule

Tab 4 Entire Submittal Section (Including Signed Offer)

Tab 5 Signed Addenda

3. COSTS AND PAYMENTS:

3.1 PAYMENT TERMS & OPTIONS: Vendors must choose an option, if a box is not checked, the City will **default to 0% - net 45 days:**

Contractor offers a prompt payment discount of either _____% - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. **Payment terms offering a discount will not be considered in the price evaluation of your offer.**

Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City’s servicing



SECTION VI – SUBMITTALS

CITY OF PHOENIX

bank (“Bank”). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same Contract term. For more information about the SUA program or to enroll, send email to mailbox.sua@phoenix.gov.

4. PRICE SCHEDULE:

4.1 Any additional charges or fees such as fuel surcharges, delivery charges, overtime, set-up, shipping and handling, etc. will not be paid. All costs must be incorporated in the pricing provided in the Price Schedule, per item 20, Miscellaneous Fees, of Section III – Special Terms and Conditions.

4.2 The City will evaluate the Price Schedule based on the Estimated Annual Quantity of 400 total hours per year.

4.2.1 The Estimated Annual Quantity is merely a forecast and does not obligate the City to guarantee any certain minimum quantity (see Section III – Special Terms and Conditions, paragraph 8. Estimated Quantities or Dollar Amounts). The City will utilize this Contract on an as-needed basis.

4.3 Offerors must list the hourly rate for the Primary Consultant and up to a maximum of four (4) key personnel required to complete the services as listed under the Scope of Work requirements. Please strikethrough any unneeded line items.

Table with 5 columns: Item No., Title of Position, Estimated Annual Hours (column must total exactly 400 hours), Hourly Rate, Extended Price. Rows include Primary Consultant and Key Personnel.



SECTION VI – SUBMITTALS

CITY OF PHOENIX

4.	Key Personnel: _____		\$	\$
5.	Key Personnel: _____		\$	\$
Grand Total				\$

5. EMERGENCY 24-HOUR SERVICE CONTACT:

Name _____

Telephone Number _____

Alternate Contact _____

Telephone Number _____

6. MINIMUM QUALIFICATIONS: Offerors must meet the minimum qualifications, in section 3, Minimum Qualifications, of Section V – Scope of Work. By checking the “Met” box, the Offeror certifies that each minimum requirement is met and that specified proof and/or documentation is submitted, providing evidence that each requirement is met. Offerors not completing and/or not meeting the minimum qualifications in full will be deemed non-responsive.

6.1 Offeror must have a minimum of three (3) years of experience in the last five (5) years providing DBE and ACDBE consulting services for a large hub primary airport.

MET NOT MET

List specific company names, dates, and contact information below to demonstrate the Offeror meet this minimum qualification:



SECTION VI – SUBMITTALS

CITY OF PHOENIX

6.2 Offeror must have experience working in an official capacity with the U.S. Department of Transportation, Federal Aviation Administration (FAA), Federal Transit Administration (FTA), or Federal Highway Administration (FHA) through an established Contract / agreement or some other verifiably official means.

MET NOT MET

List specific company names, dates, and contact information below to demonstrate the Offeror meet this minimum qualification:

6.3 Offeror must have experience working on a minimum of two (2) DBE / ACDBE Small Business Enterprise disparity studies.

MET NOT MET

List specific company names, dates, and contact information below to demonstrate the Offeror meet this minimum qualification:



SECTION VI – SUBMITTALS

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ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the material(s) or service(s) listed by the attached Contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc. and the Contractor’s Offer as accepted by the City.

This Contract shall henceforth be referred to as Contract No._____. The Contractor has been cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives purchase order, or Contract documentation.

CITY OF PHOENIX

A Municipal Corporation
Jeffrey Barton, City Manager

Michael D. Hughes
Deputy Aviation Director
City of Phoenix Aviation Department

Attest:

_____ this ____ day of _____ 2022
City Clerk

Approved as to form this 19th day of January 2017. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.



SECTION VI – SUBMITTALS

CITY OF PHOENIX

OFFER

TO THE CITY OF PHOENIX - The Undersigned hereby offers and agrees to furnish the material and or service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of a solicitation.

Arizona Sales Tax No. _____
Use Tax No. for Out-of State Suppliers _____
City of Phoenix Sales Tax No. _____
Arizona Corporation Commission File No. _____

Taxpayer's Federal Identification No.: If recommended for Contract award, Bidder agrees to provide its federal taxpayer identification number or as applicable its social security number to the City of Phoenix for the purposes of reporting to appropriate taxing authorities, monies paid by the City of Phoenix under the awarded Contract. If the Bidder provides its social security number, the City will only share this number with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

Enter City's Registration System ID Number
Located at City's eProcurement website (see
SECTION I – INSTRUCTIONS - CITY'S
REGISTRATION)

Offeror has read, understands, and will fully and faithfully comply with this solicitation, its attachments and any referenced documents. Offeror certifies that the prices offered were independently developed without consultation with any other Offeror or potential Offerors.

Authorized Signature

Date

Printed Name and Title
(Member, Manager, President)

(LLC, Inc., Sole Proprietor) _____
Address _____
City, State and Zip Code _____
Telephone Number _____
Company's Fax Number _____
Company's Toll Free # _____
Email Address _____



SECTION VI – SUBMITTALS

CITY OF PHOENIX

This form must be signed and submitted to the City and all questions must be answered (or N/A) or your Offer may be considered non-responsive.

1. Name of person submitting this disclosure form.

First	MI	Last	Suffix
-------	----	------	--------

2. Contract Information

Solicitation # or Name:

3. Name of individual(s) or entity(ies) seeking a Contract with the City (i.e. parties to the Contract)

4. List any individuals(s) or entity(ies) that are owners, partners, parent, sublessees, joint venture, or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.

5. List any individuals or entities that will be subcontractors on this Contract or indicate N/A.

- Subcontractors may be retained, but not known as of the time of this submission.
- List of subcontracts, including the name of the owner(s) and business name:

6. List any attorney, lobbyist, or consultant retained by any individuals listed in Questions 3, 4, or 5 to assist in the proposal or seeking the resulting Contract. If none, indicate N/A.



7. Disclosure of Conflict of Interest:

A. City Code Section 43-34

Are you aware of any fact(s) with regard to this solicitation or resulting Contract that would raise a “conflict of interest” issue under City Code Section 43-34?

“An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting Contract, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the solicitation, any other part of the procurement, or the Contract award.”

- I am not aware of any conflict(s) of interest under City Code Section 43-34.
- I am aware of the following potential or actual conflict(s) of interest:

B. ARS Sections 38-501 et. Seq. & City Charter Chapter 11

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the Contract. This prohibition extends to subcontracts on City Contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 through 38-511, for more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City employees).

Please note that any Contract in place at the time a person becomes a public officer or employee may remain in effect. But the Contract may not be amended, extended, modified, or changed in any manner during the officer’s or employee’s city service without following city administrative regulations.



SECTION VI – SUBMITTALS

CITY OF PHOENIX

Are you aware of any fact(s) with regard to this Contract that would raise a “conflict of interest” issue under A.R.S. Sections 38-501 through 38-511 (See Arizona Revised Statutes regarding conflict of interest at www.azleg.gov).

- I am not aware of any conflict(s) of interest under Arizona Revised Statutes Sections 38-501 through 38-511.
- I am aware of the following conflict(s) of interest:

8. Acknowledgements

A.Solicitation Transparency Policy – No Contact with City Officials or Staff During Evaluation

- I understand that a person or entity who seeks or applies for a city Contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the Contract after a solicitation has been posted.
- This “no-contact” provision only concludes when the Contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

B.Fraud Prevention and Reporting Policy

- I acknowledge that the City has a fraud prevention and reporting policy and takes fraud seriously. I will report fraud, suspicion of fraud, or any other inappropriate action to: telephone no. 602-261-8999 or 602-534-5500 (TDD); or aud.integrity.line@phoenix.gov.

The purpose of the fraud policy is to maintain the City's high ethical standards. The policy includes a way for our business partners to report wrongdoing or bad behavior. Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud.



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OATH

I affirm that the statements contained in this form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.
Should any of the answers to the above questions change during the course of the Contract, particularly as it relates to any changes in ownership, applicant agrees to update this form with the new information within 30 days of such changes. Failure to do so may be deemed a breach of Contract.

PRINT NAME

TITLE

SIGNATURE

DATE

COMPANY (CORPORATION, LLC, ETC.) NAME and DBA

2291292



SECTION VII – EXHIBITS

**EXHIBIT A
SUPPLEMENTAL TERMS AND CONDITIONS
TO ALL AIRPORT AGREEMENTS**

1. 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.



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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



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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.



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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 practices.

3. Immigration Reform and Control Act of 1986 (IRCA)

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

Contractor agrees that the City of Phoenix may cancel this Contract pursuant to Arizona Revised Statutes (A.R.S.) § 38-511 (Cancellation of political subdivision and state Contracts).

5. Legal Worker Requirements

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A) (Verification of employment eligibility; e-verify program). 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(A).



B. A breach of warranty under paragraph A above shall be deemed a material breach of this Contract and is subject to penalties up to and including termination of the Agreement.

C. The City of Phoenix retains the legal right to inspect the papers of Contractor or its subcontractor employees who work on this Contract to ensure that Contractor or its subcontractors are complying with the warranty under paragraph A above.

6. City of Phoenix Equal Employment Opportunity Requirement

6.1 If Contractor is by this Contract a supplier to or lessee of the City, then the requirements of the Phoenix City Code, Chapter 18, Article V applies, including the agreement that:

“Any supplier/lessee in performing under this Contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier 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.”

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

If the supplier/lessee employs more than 35 employees, the following language shall be included as the last paragraph to the clause above:

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



6.2 Documentation. Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

6.3 Monitoring. The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this Section 3 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.

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).
- D.** Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701, *et seq.*), as amended (prohibits discrimination on the basis of disability), and 49 C.F.R. Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance).
- E.** The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101, *et seq.*) (prohibits discrimination on the basis of age). Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex).
- 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).



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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.

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