



**CITY OF TEMPE, ARIZONA
PUBLIC WORK DEPARTMENT
ENGINEERING DIVISION**

INVITATION FOR BIDS

FOR

**BIKE LANES/ PEDESTRIAN IMPROVEMENTS – SCOTTSDALE ROAD FROM
CURRY ROAD TO CONTINENTAL DRIVE**

**PROJECT NO. 6009741
FEDERAL AID PROJECT NO. TMP-0(254)D
ADOT TRACS NO. 0000 MA TMP T0260 01C**

APPROVED BY:

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TABLE OF CONTENTS

1.	INTRODUCTION.....	6
1.1.	OVERVIEW OF PROJECT	6
1.2.	EXAMINATION OF PREMISES, SPECIFICATIONS, AND CONTRACT	6
1.3.	START OF WORK / TERM OF CONTRACT.....	7
2.	SCOPE OF WORK.....	7
2.1.	CONTRACTOR’S CONSTRUCTION SCHEDULE	7
2.2.	UNIFORM STANDARD SPECIFICATIONS	7
2.3.	CONTRACTOR’S REPRESENTATIVE	7
2.4.	SUPERVISION BY CONTRACTOR	8
2.5.	AUTHORITY OF CITY ENGINEER’S APPOINTED REPRESENTATIVE	8
2.6.	BENEFICIAL OCCUPANCY.....	8
2.7.	SUBSTANTIAL COMPLETION	8
2.8.	PROJECT COMPLETION.....	8
2.9.	CONTRACT COMPLETION DATE	9
2.10.	FINAL INSPECTION.....	9
2.11.	FINAL ACCEPTANCE & GUARANTEE	9
2.12.	AS-BUILT DRAWINGS.....	9
2.13.	SHOP DRAWINGS, SCHEDULES, SAMPLES & PROJECT DOCUMENTATION	9
2.14.	QUALITY CONTROL	10
2.15.	EXCESS MATERIALS	11
2.16.	MISCELLANEOUS REMOVAL AND RELOCATIONS.....	11
2.17.	PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK	11
2.18.	SURVEY CONTROL POINTS.....	12
2.19.	HINDRANCES AND DELAYS	12
2.20.	SUBSIDIARY WORK	12
2.21.	MISCELLANEOUS WORK AND ALLOWANCES	13
2.22.	CHANGE ORDERS.....	13
2.23.	ADDITIONAL SERVICES	13
3.	SPECIAL TERMS AND CONDITIONS.....	14
3.1.	PAYMENT BOND; PERFORMANCE BOND	14
3.2.	INSURANCE	14
3.3.	INDEMNIFICATION	17

3.4.	PAYMENT	17
3.5.	PRE-CONSTRUCTION MEETING	18
3.6.	SUBLETTING OF CONTRACT	19
3.7.	LICENSES	19
3.8.	HAUL PERMIT	19
3.9.	LANDSCAPING AND IRRIGATION REQUIREMENTS	20
3.10.	SPECIFIC PRODUCTS OR BRANDS	20
3.11.	ENVIRONMENTAL REQUIREMENTS	20
3.12.	SAFETY REQUIREMENTS	22
3.13.	TRAFFIC CONTROL	22
3.14.	CLEAN-UP	24
3.15.	APPROXIMATE QUANTITIES	24
3.16.	BLUE STAKE & CALL BEFORE YOU DIG	25
3.17.	PROTECTION OF EXISTING FACILITIES	25
3.18.	UNDERGROUND UTILITIES	25
3.19.	RELOCATION OF UTILITIES	25
3.20.	NOTIFICATION OF PROPERTY OWNERS	25
3.21.	ACCESS	26
3.22.	UTILITY AND PUBLIC AGENCY CONSTRUCTION CLEARANCE AGREEMENT	26
3.23.	GOVERNMENT APPROVALS AND PERMITS	26
3.24.	KEY CONTACTS	27
3.25.	DUST PREVENTION	27
3.26.	COMPLAINTS FROM THE GENERAL PUBLIC	27
3.27.	PREVAILING WAGE	27
3.28.	SECURE FACILITY ACCESS	28
4.	INSTRUCTION TO BIDDERS	29
4.1.	SEALED BIDS	29
4.2.	ADDENDA	30
4.3.	BID SECURITY	30
4.4.	BIDS	31
4.5.	IRREGULAR BIDS	31
4.6.	BIDDING PHASE REQUIREMENTS	31
4.7.	PRE-CONTRACT AWARD REQUIREMENTS	31

4.8.	BID QUANTITIES	32
4.9.	PROTEST PROCEDURE	32
4.10.	NO LOCAL PREFERENCE	32
5.	EVALUATION AND AWARD	32
5.1.	AWARD AND EXECUTION OF CONTRACT	32
5.2.	PLANS TO THE SUCCESSFUL BIDDER	33
5.3.	ISSUANCE OF THE NOTICE TO PROCEED	33
6.	GENERAL TERMS AND CONDITIONS	33
6.1.	LIQUIDATED DAMAGES	33
6.2.	ESCROW AND HOLDBACK	33
6.3.	TERMINATION	34
6.4.	DEFAULT PROVISIONS	35
6.5.	WARRANTY	36
6.6.	OWNERSHIP OF DOCUMENTS / INFRINGEMENT OF PATENT OR COPYRIGHT	36
6.7.	COMPLIANCE WITH STATE AND FEDERAL LAWS	37
6.8.	ANTIDISCRIMINATION	38
6.9.	JURISDICTION	39
6.10.	DISPUTE RESOLUTION	39
6.11.	SUCCESSORS AND ASSIGNS	39
6.12.	NON-WAIVER	39
6.13.	SURVIVAL	39
6.14.	SEVERABILITY	39
6.15.	INTEGRATION	40
6.16.	TIME IS OF THE ESSENCE	40
6.17.	THIRD PARTY BENEFICIARY	40
6.18.	CONFLICT OF INTEREST	40
6.19.	COOPERATION AND FURTHER DOCUMENTATION	40
6.20.	UNAUTHORIZED FIREARMS & EXPLOSIVES	41
6.21.	NOTICES TO CITY ENGINEER	41
6.22.	NOTICES TO CONTRACTOR	41
6.23.	GIS DATA DISCLAIMER	41
6.24.	AMENDMENT OF CONTRACT	42
6.25.	LABOR	42

6.26.	NON-APPROPRIATION OF FUNDS OR NON-FUNDING	43
6.27.	PUBLIC RECORDS.....	43
6.28.	COUNTERPARTS.....	43
6.29.	RECORD RETENTION.....	43
6.30.	DRUG-FREE WORKPLACE.....	43
7.	FEDERAL FHWA AND ADOT PROVISIONS/FORMS	
8.	CITY OF TEMPE FORMS	
	EXHIBIT A..... TECHNICAL SPECIFICATIONS	

**CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION**

NOTICE TO CONTRACTORS

**BIKE LANES/ PEDESTRIAN IMPROVEMENTS – SCOTTSDALE ROAD FROM CURRY
ROAD TO CONTINENTAL DRIVE
PROJECT NO. 6009741
FEDERAL AID PROJECT NO. TMP-0(254)D
ADOT TRACS NO. 0000 MA TMP T0260 01C**

1. INTRODUCTION

THIS INVITATION FOR BIDS is hereby offered by the City of Tempe, an Arizona municipal corporation (“City”), for **Bike Lanes/ Pedestrian Improvements – Scottsdale Road from Curry Road to Continental Drive**, as set forth herein, and shall be identified as **Project No. 6009741**.

This Project is funded by the U.S. Department of Transportation, Federal Highway Administration (FHWA), through the Arizona Department of Transportation (ADOT).

The Federal Provisions section of this Invitation for Bids and Contract applies to all bidders and all contractors for the Project.

1.1. OVERVIEW OF PROJECT

This project is located along Scottsdale Road from Curry Road to Continental Drive within City of Tempe’s jurisdictional limits. The north limit of the project is the dividing line between the City of Scottsdale and City of Tempe’s jurisdiction. This project requires coordination of work at the intersection of Scottsdale Road and Continental Drive with Project No. 5810911 – Roosevelt Storm Drian, which is scheduled during the same time frame as this project.

1.2. EXAMINATION OF PREMISES, SPECIFICATIONS, AND CONTRACT

Bidder shall visit the site of the Project and shall fully acquaint itself with all conditions as they exist, so that it may fully understand the site, difficulties, and restrictions attending the execution of the work.

Bidder shall also thoroughly examine and be familiar with the specifications, plans, and the Contract documents. Failure of Bidder to obtain, receive, or examine any addenda to the proposed Contract, or to visit the site and acquaint itself with the conditions there existing, shall not relieve it from any obligation with respect to the submitted bid.

By submitting a bid, Bidder agrees that it has examined the site, specifications, plans, and Contract, and accepts all site conditions, the proposed Contract, and all exhibits and addenda thereto.

1.3. START OF WORK / TERM OF CONTRACT

Work shall start as soon as practicable, but not later than seven (7) calendar days after the Notice to Proceed date and shall be completed within 308 calendar days following the Notice to Proceed date.

2. SCOPE OF WORK

The proposed work will consist of **bicycle lanes in each direction on Scottsdale Road and will provide connectivity to the north at Continental Drive. Curbs and medians will be reconstructed to accommodate the bicycle lanes and buffer space in each direction, while maintaining the existing configuration of three lanes in each direction along with left turning pockets. There are five signalized intersections, curb and gutter and sidewalk present throughout the corridor. In addition to the roadway improvements, the scope also includes ramp reconstruction to comply with Americans with Disabilities Act (ADA) requirements, signal and push button modifications, signing and markings, utilities relocation, landscaping and irrigation restoration, together with associated work.**

2.1. CONTRACTOR’S CONSTRUCTION SCHEDULE

Prior to the start of work, a construction progress schedule shall be required and shall comply with the requirements of MAG Specifications 108.4. In addition, a schedule update comparing actual progress with scheduled progress will be required with the submission of each monthly pay request.

2.2. UNIFORM STANDARD SPECIFICATIONS

All work done under this Contract shall be accomplished in accordance with the Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction – latest edition (“MAG Specifications”) and the City of Tempe Supplement to the MAG Uniform Standard Details and Specifications for Public Works Construction – 2014 (“City of Tempe Supplement”), except as modified in the Contract.

In the case of a discrepancy or conflict, the order in which documents and Contract sections govern is as follows, from highest to lowest: federal provisions, special terms and conditions, technical specifications, plans, general terms and conditions, City of Tempe Supplement, and MAG Specifications.

All bids shall be made in accordance with the General Conditions of the MAG Specifications.

2.3. CONTRACTOR’S REPRESENTATIVE

Contractor shall at all times be present at the worksite or represented by a superintendent or other properly designated agent. Instructions and information given by City construction project manager to Contractor’s superintendent or agent on the work shall be considered as having been given to Contractor.

2.4. SUPERVISION BY CONTRACTOR

Contractor will supervise and direct the work. It will be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor will employ and maintain on the work a qualified superintendent who shall be designated in writing by Contractor and approved by City as Contractor's representative at the site. The superintendent shall have full authority to act on behalf of Contractor and all communications given to the superintendent shall be as binding as if given to Contractor. The superintendent shall be present on the site at all times in order to perform adequate supervision and coordination of the work. No substitution of the superintendent will be permitted without prior written request by Contractor and written consent of City.

2.5. AUTHORITY OF CITY ENGINEER'S APPOINTED REPRESENTATIVE

City construction project manager shall act as City Engineer's designated representative during the construction period. He or she shall advise on questions concerning coordination with City, public safety, and quality and acceptability of materials and work performed. City Engineer, City construction project manager, or their assigned inspector shall interpret the intent of the Contract plans, specifications, and technical provisions in an unbiased manner.

City Engineer, City construction project manager, or their assigned inspector shall be present on the site at times during construction to monitor the work and to maintain records for Contract management. City construction project manager shall promptly make decisions relative to the interpretation of the Contract so as to minimize delays in construction. City construction project manager will not be responsible for directing construction, control, techniques, sequence, or procedures, or for directing job safety.

2.6. BENEFICIAL OCCUPANCY

Beneficial occupancy is use of a facility or project, in whole or in part, by City for its intended purpose. This may occur even though some work of the Contract remains undone. Prior to such use or occupancy, City will provide notice to Contractor and accomplish a partial acceptance inspection. Beneficial occupancy will apply to general right-of-way projects only.

2.7. SUBSTANTIAL COMPLETION

Substantial completion is work that is ready for occupancy and use for its intended purpose as certified by City and a certificate of occupancy. This term will be applied to building construction projects only.

2.8. PROJECT COMPLETION

Project completion is full completion of all construction associated with the Contract, including, but not limited to, punch list items, close-out documentation, operations and maintenance manuals, warranties, and record plans as certified by the architect/engineer of record. Contractor may be found in default of this Contract in accordance with MAG Specifications 108.10 should project completion fall behind

substantial completion by more than forty-five (45) days.

2.9. CONTRACT COMPLETION DATE

The Contract completion date established by reference to the Notice to Proceed date is for completion of all or specified portions of the work. This includes items of work to be completed under an owner allowance or as part of a contingency item. The stated Contract completion date will take into account anticipated or actual weather conditions that are not unusually severe for the area and time of year. This date may be expressed as a calendar date or as a number of calendar days after the Notice to Proceed date.

If time extensions are issued by City, the revised Contract completion date will be referred to as the adjusted Contract completion date.

2.10. FINAL INSPECTION

Contractor is responsible for complying with the specifications and is hereby forewarned that final approval of any work will not be given until the entire project is completed and accepted by City. Prior to final inspection on any City facilities requiring a building permit, Contractor must call for final inspection from the Community Development Department and Public Works Department of City. The final inspection must be completed prior to final acceptance and payment.

2.11. FINAL ACCEPTANCE & GUARANTEE

Final acceptance shall mean a written final acceptance of the work. City Engineer shall make the final acceptance promptly after the work has been inspected and found to be completed in accordance with the Contract. The work performed under this Contract shall be guaranteed for a period of one (1) year from the date of final acceptance.

2.12. AS-BUILT DRAWINGS

Contractor shall provide and maintain accurate field data on a redlined set of Contract drawings, which are to be kept current and submitted as complete at the conclusion of the construction. These record drawings will be used as documentation for progress payments, and upon project completion, for the preparation of record drawings by the architect/engineer. Final payment will not be issued until all record drawings are submitted by Contractor, and are certified to be complete by the architect/engineer of record.

2.13. SHOP DRAWINGS, SCHEDULES, SAMPLES & PROJECT DOCUMENTATION

In time for each to serve its proper purpose and function, Contractor shall submit to City construction project manager such schedules, reports (including daily construction reports and progress meeting notes), drawings, lists, literature samples, instructions, directions, and guarantees as are specified or reasonably required for construction, operation, and maintenance of the facilities to be built and/or furnished under this Contract.

Shop drawings and data shall be submitted to City construction project manager as hard copy and legible electronic PDF document of each submittal.

The submittal shall clearly indicate the specific area of the Contract for which the submittal is made. The additional copies received will be returned to Contractor's representative at the job site. City construction project manager's notations of the action taken will be noted on one (1) of these returned copies.

The above drawings, lists, prints, samples, and other data shall become a part of the Contract and a copy of the same shall be kept with the job site Contract, and the fabrications furnished shall be in conformance with the same.

City construction project manager's review of the above drawings, lists, prints, specifications, samples, or other data shall in no way release Contractor from its responsibility for the proper fulfillment of the requirements of this Contract, nor for fulfilling the purpose of the installation, nor from its liability to replace the same should it prove defective or fail to meet the specified requirements.

2.14. QUALITY CONTROL

All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted. All work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from the Contract, and it shall be the duty of Contractor to call City construction project manager's attention to apparent errors or omissions and request instruction before proceeding with the work.

City Engineer may, through appropriate instruction, correct errors and supply omissions. Instructions provided by City Engineer shall be as binding upon Contractor as though contained in the original Contract.

At the option of City construction project manager, material to be supplied under this Contract will be tested and/or inspected either at its place of origin or at the site of the work. Contractor shall give City construction project manager written notification well in advance of actual readiness of material to be tested and/or inspected at point of origin. Satisfactory tests and inspections at the point of origin shall not be construed as a final acceptance of the material, nor shall it preclude retesting or reinspection at the site of the work.

Contractor is responsible for quality control measures necessary to provide acceptable quality in the production, handling, and placement of all materials. All materials will be inspected, tested, and approved by City construction project manager prior to incorporation in the work. Under Federal materials and quality control guidelines Contractor shall perform various materials testing as part of its quality control measures. These measures are as required on the Local Public Agency Materials Sample Checklist under recommended number of samples (ACCP). Contractor is further responsible for coordinating the testing efforts of up to three separate testing entities to perform the quality control testing (Contractor provided), quality assurance testing (City provided); and independent assurance testing (City provided). When the specifications require specific quality control

measures for certain materials, sampling, and testing of materials shall be in accordance with the requirements of the ADOT Materials Testing Manual and applicable Federal specifications. Any work in which materials not previously approved are used shall be performed at Contractor's risk and may be considered as unauthorized and unacceptable and not subject to the payment provisions of the contract.

Contractor shall submit to City construction project manager an original or copy of either a Certificate of Compliance or a Certificate of Analysis, as required, prior to the use of any materials or manufactured assemblies for which these specifications or the Special Provisions require that such a certificate be furnished. Materials or manufactured assemblies for which a certificate is furnished may be sampled and tested at any time, and, if found not in conformity with the requirements of the plans and the specifications, will be subject to rejection, whether in place or not. Certificate of Compliance or a Certificate of Analysis, shall contain the information described in ADOT Standard Specifications Subsection 106.05(b) and 106.05(c).

Measurement and payment for the quality control testing shall be incidental to the project unless otherwise addressed within the contract, bid tab, or specifications as a payment and bid item.

2.15. EXCESS MATERIALS

Excess or unsuitable material, broken asphaltic concrete, and broken Portland cement concrete shall be disposed of by Contractor. Contractor shall, prior to commencement of the work, submit a letter to City Engineer stating the location of disposal site(s) for all excess or unsuitable material and certifying that it has obtained the property owner's permission for the disposal of all surplus material.

2.16. MISCELLANEOUS REMOVAL AND RELOCATIONS

Miscellaneous removals and relocations shall be performed by Contractor, and is construed to mean the removal of all unsuitable materials, whether designated or implied by the plans and specifications, and shall include but not be limited to removal of items of every nature and description such as pipes, concrete, asphalt, block, brick, rock, and metal, including temporary removal and reinstallation, unless such items are specifically designated in a separate bid item. In addition, certain items requiring temporary removal and reinstallation such as mailbox stands, sign posts, survey monument frames and covers, shall be included in this category.

2.17. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

Contractor shall properly guard and protect all finished or partially finished work, and shall be responsible for the same until that phase is completed and accepted by City.

Estimate or partial payment of completed work shall not release Contractor from such responsibility prior to City's acceptance, but Contractor shall turn over the entire work in full accordance with these specifications before final payment can be made.

2.18. SURVEY CONTROL POINTS

Existing survey monuments shall be protected by Contractor or removed and replaced under the direct supervision of City of Tempe Engineering Division Land Services Section.

One week prior to construction, Contractor shall notify City of Tempe Engineering Division Land Services Section of any survey monuments that need to be relocated. Any monuments damaged or lost due to Contractor's negligence and/or lack of notification to City of Tempe Engineering Division Land Services Section shall be replaced at Contractor's expense. In the event a lot corner will be disturbed, Contractor shall notify affected property owner(s) and obtain consent prior to any construction. Any lot corners disturbed or lost due to Contractor's negligence shall be replaced at Contractor's sole expense.

2.19. HINDRANCES AND DELAYS

Except as provided herein, no charge shall be made by Contractor for hindrances or delays from any cause during the progress of any portion of the work set forth in this Contract; however, delays due to no fault or neglect of Contractor may entitle Contractor to a time extension sufficient to compensate for the delays. The amount of the time extension, if any, shall be determined by City Engineer provided Contractor gives City Engineer immediate notice in writing of the cause of such delay.

The parties agree to negotiate in good faith for the recovery of damages related to expenses incurred by Contractor for a delay for which City is solely responsible that is unreasonable under the circumstances, and that was not within the contemplation of the parties to the Contract at the time the Contract was entered into.

2.19.1. Unless specifically provided for herein, the maximum compensation for an unreasonable or unforeseen delay shall not exceed the daily amount specified for liquidated damages in MAG Specification 108.9, as based on the original Contract amount.

2.19.2. This section shall not be construed to void any provisions of this Contract, which require notice of delays, or which provide for alternative dispute resolution, other procedures for settlement, or which provide for liquidated damages.

However, if the parties cannot reach agreement for the recovery of damages as set forth herein, the determination of City shall be final.

2.20. SUBSIDIARY WORK

All work called for in the plans and specifications shall be performed by Contractor, and unless a specific bid item is provided for the work, then such portion of the work will be considered subsidiary to other work for which payment is provided.

2.21. MISCELLANEOUS WORK AND ALLOWANCES

Unless otherwise specified in the Contract, the following items will be included in the work with no direct payment allowed. Payment shall be included in the payment for other items for which direct payment is made.

- 2.21.1. Contractor's expenses for, but not limited to, mobilization, job site office, storage facilities, traffic control and public safety devices, sanitary facilities, utilities, and telephone.
- 2.21.2. Cleanup, including day-to-day cleanup.
- 2.21.3. Notification to residents adjacent to this project prior to the start of work on construction that may affect them.
- 2.21.4. Water required for compaction or dust control.
- 2.21.5. Miscellaneous removals and relocations not otherwise specified in the Technical Specifications.
- 2.21.6. Power pole bracing.
- 2.21.7. Removal of trees twelve inches (12") or less in diameter.
- 2.21.8. Removal, relocation, and/or modification of existing walls and fences.
- 2.21.9. Trimming of trees and bushes.
- 2.21.10. Replacement of plant material and repair of irrigation equipment to meet or exceed conditions existing prior to Contractor beginning work.

2.22. CHANGE ORDERS

In the event that significant changes in the scope of the work and/or changes in the quantities due to contingencies of construction become necessary, such changes shall be made in accordance with Section 104.2 of the General Conditions in the MAG Specifications.

The costs associated with any extra work as authorized by City must be approved prior to the start of work. The final costs for additional work shall also include all charges associated with extended general conditions or Contract acceleration. Pay requests for extra work performed shall be submitted with the next billing cycle and shall not exceed thirty (30) days from the date extra work was performed.

2.23. ADDITIONAL SERVICES

Additional services that are outside the scope of basic services contained in this Contract shall not be performed by Contractor without prior written authorization from City. Additional services, when authorized by an executed Contract or an amendment to this Contract, shall be compensated for by a fee mutually agreed upon between City and Contractor.

3. **SPECIAL TERMS AND CONDITIONS**

3.1. **PAYMENT BOND; PERFORMANCE BOND**

A payment bond and a performance bond, each in an amount equal to the full contract amount, will be required of Contractor immediately after notice of Contract award, and before final Contract execution. Each bond shall be in accordance with Arizona Revised Statutes (A.R.S.) § 34-201, *et seq.*, as amended from time to time.

Arizona law provides that the bonds shall be executed solely by a bonding company, liability insurance carrier, or excess insurance carrier that holds a certificate of authority to transact surety business in Arizona, issued by the director of the department of insurance pursuant to A.R.S. title 20, chapter 2, article 1, as amended from time to time. Additionally, the City requires that the bonding company, liability insurance carrier, or excess insurance carrier have a Financial Strength Rating of A- or better and a Financial Size Category of VII or higher, as listed in the most recent “Best’s Key Rating Guide – Property/Casualty,” published by A.M. Best Company. An individual surety or sureties shall not execute either bond, even if the requirements of A.R.S. § 7-101 are satisfied.

3.2. **INSURANCE**

Certificates of Insurance verifying insurance coverage that meets the following minimum requirements will be required of Contractor immediately after notice of Contract award, and before final Contract execution.

Arizona law provides that the insurer must hold a certificate of authority to transact insurance in Arizona, issued by the director of the department of insurance pursuant to Arizona Revised Statutes, title 20, chapter 2, article 1, as amended from time to time. Additionally, the City requires that the insurance company have a Financial Strength Rating of A- or better and a Financial Size Category of VII or higher, as listed in the most recent “Best’s Key Rating Guide – Property/Casualty,” published by A.M. Best Company. This requirement does not apply to the Workers’ Compensation / Employer’s Liability portion of the Certificate of Insurance.

3.2.1. Contractor shall maintain limits no less than:

- a. **Commercial General Liability:** \$2,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), premises/operations, underground explosion and collapse hazard, personal injury, broad form property damage, products and completed operations, independent contractors and product liability. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.
- b. **Automobile Liability:** \$1,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable.

- c. **Excess Liability (umbrella form):** As required.
- d. **Workers' Compensation and Employer's Liability:** Workers' Compensation and Employer's Liability statutory limits as required by the State of Arizona.

City shall have no responsibility or liability for such insurance coverage.

3.2.2. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officials, employees, and volunteers, or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

3.2.3. **Other Insurance Provisions**

The policies or self-insurance certifications are to contain, or be endorsed to contain, the following provisions:

a. **Commercial General Liability and Automobile Liability Coverage:**

City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to: liability arising out of activities performed by or on behalf of Contractor including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, or volunteers, for work related to Contractors', employees', agents', subcontractors', or sub-subcontractors' activities.

Contractor's insurance coverage shall be primary with respect to City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute to it.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officers, officials, employees, agents, or volunteers.

Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

b. Workers' Compensation and Employer's Liability Coverage

The insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees, agents, and volunteers for losses arising from work performed by Contractor for City.

c. All Coverages

Each insurance policy required by this Contract shall be endorsed to state that the coverage shall not be suspended, voided, and/or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

3.2.4. Other Insurance Requirements

Contractor shall:

- a. Immediately after notice of Contract award, and before final Contract execution, furnish City with certificates of insurance, in form and with insurers acceptable to City, which shall clearly evidence all insurance required in this Contract and provide that such insurance shall not be canceled, allowed to expire, or be materially reduced in coverage except on thirty (30) days' prior written notice by certified mail to City, and in accord with stated insurance requirements of this bid solicitation. MAG Specification 103.6 is fully incorporated into this Contract, except to the extent it conflicts with the limits set forth in this Contract. The insurance policies required by MAG Specification 103.6 shall additionally provide full coverage of indemnity to City, including an increase in the minimum limits to \$2,000,000 combined single limit coverage for General Liability. Prior to execution of the Contract, Contractor shall furnish City with a Certificate of Insurance as evidence that policies providing the required coverages, conditions, and limits are in full force and effect. Such certificates shall identify the project and shall provide for not less than thirty (30) days' advance written notice to City, by certified mail, of cancellation or termination. Any cancellation clause shall not include the phrases "endeavor to" or "but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed waiver of City's right to insist on, strict fulfillment of Contractor's obligations under this Contract.
- b. Provide certified copies of endorsements and policies if requested by City in addition to certificates of insurance.
- c. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
- d. Maintain such insurance from the time services commence until services are completed. Should any required insurance lapse during the Contract

term, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, City may at its sole option, terminate this Contract effective on the date of such lapse of insurance.

3.2.5. Subcontractors and Sub-Subcontractors

Contractor shall include all subcontractors and sub-subcontractors as insureds under its policies. All coverage for subcontractors and sub-subcontractors shall be subject to all of the requirements stated herein for Contractor.

3.3. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless City, its officers, and its employees, from liabilities, damages, losses, and costs, including reasonable attorney fees and court costs, to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor, its subcontractors, design professionals, or other persons employed or used by Contractor in the performance of the contract or subcontract. Nothing in this section shall prohibit the requirement of insurance coverage that complies with this section, including the designation of any person as an additional insured on a general liability insurance policy or as a designated insured on an automobile liability policy. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

3.4. PAYMENT

City shall make payment to Contractor pursuant to A.R.S. § 34-221 and MAG Specifications 109.

3.4.1. Measurement of Payment

Quantities of materials for this work shall be paid under the appropriate schedule at the applicable Contract price per unit of measurement with no allowances for waste.

Payment for various items in the bid shall be compensation in full for furnishing all materials, labor, tools, equipment, and appurtenances necessary to complete the work in a satisfactory manner as specified. No additional payment will be made for work related to any item unless specifically called for in the bid.

Materials placed without approval of the inspector, or materials rejected due to improper placing, improper proportions of materials, or materials found to be defective, will not be paid for.

3.4.2. Payment Requests

Payment requests shall be submitted by Contractor through the City's PMWeb Software System. Requests shall be uploaded to the PMWeb

Software System at <https://tempe-az.pmweb.com/pmweb/> using a login provided to Contractor by City, and Contractor shall include all supporting documentation for work performed during the payment period.

Payment requests submitted with insufficient documentation to verify work effort and quantities will be returned to Contractor for revision. Revised payment requests shall be re-submitted to City electronically through the City's PMWeb Software System.

Contractor shall submit its first request for payment no later than 40 calendar days from the Notice to Proceed date. All subsequent requests for payment shall be made on a monthly basis and no later than every 30 calendar days.

3.5. PRE-CONSTRUCTION MEETING

Contractor shall meet with the City Engineer for a preconstruction conference prior to commencing work. At the preconstruction conference, Contractor shall submit a progress schedule showing the order in which Contractor proposes to carry out the work; the dates on which Contractor and its subcontractors will start the salient features of the work, including procurement of materials, equipment, etc.; the ordering of articles of special manufacture; the furnishing of drawings, plans, and other data for the review and approval of the City Engineer; the inspection of structural steel fabrication; and the contemplated dates for the completion of the said salient features. The schedule may be in a bar chart format or a critical path method format. No schedule activity shall be shorter than one day or longer than 15 working days. The schedule must show interrelationships among the activities, and the controlling items of work throughout the project shall be identified. If requested by the City Engineer, Contractor shall furnish information needed to justify activity time durations. Such information shall include estimated manpower, equipment, unit quantities, and production rates. The schedule shall illustrate the completion of the work not later than the contract completion date.

Contractor shall furnish authorized signature forms and a list of Contractor's proposed subcontractors and major material suppliers.

Progress schedules shall have considered the time requirement for ordering articles of special manufacture to meet specific requirements of the work when structural steel fabrication inspection is required.

Contractor shall submit a traffic control plan in accordance with the subsection of Special Terms and Conditions titled Traffic Control.

Contractor shall also submit a safety plan and designate an employee as Safety Supervisor, in accordance with ADOT Standard Specifications Subsection 107.08. If approved by the City Engineer, Contractor may designate one employee to be responsible for both the traffic control and safety plans.

If the project requires that Contractor or City personnel to work from falsework, within shoring, or in any other hazardous area, Contractor shall submit as part of Contractor's safety plan specific measures it will use to ensure worker safety.

Contractor shall also submit a program for erosion control and pollution prevention, as set forth in ADOT Standard Specifications Subsection 104.09, on all projects involving clearing and grubbing, earthwork, structural work, or other construction, when such work is likely to create erosion or pollution problems.

Contractor shall designate a qualified employee as Quality Control Manager to be responsible for implementing, monitoring and, as necessary, adjusting the processes to assure acceptable quality. The Quality Control Manager shall be responsible for the implementing and monitoring of the quality control requirements described in ADOT Standard Specifications Subsection 106.04(C) and 106.05. The quality control manager shall be a full time employee of Contractor, and shall be on the project site during all construction activities.

If the project has an On-the-Job Training (OJT) requirement (see the subsection of Federal Provisions titled On-the-Job Training), Contractor shall submit its written OJT schedule and training plan.

If Contractor fails to provide the required submissions, the City Engineer may order the preconstruction conference suspended until such time as they are furnished. Work shall not begin until the preconstruction conference has been concluded and the safety plan has been approved, unless authorized by the City Engineer. Contractor shall not be entitled to additional compensation or an extension of contract time resulting from any delays due to such a suspension.

3.6. SUBLETTING OF CONTRACT

In accordance with Form FHWA-1273, VII, Contractor shall perform, with Contractor's own organization, construction work that amounts to not less than thirty percent (30%) of the total Contract price.

3.7. LICENSES

The low bidder and all subcontractors must carry the appropriate State of Arizona contractor's license(s) for the proposed work prior to award of the Contract. Should the lowest responsive bidder not be able to obtain the required license(s), the project may be awarded to the next lowest responsive bidder who has the required license(s).

3.8. HAUL PERMIT

In any operation where more than one-tenth of an acre of surface area is disturbed and/or when unpaved onsite haul roads are used, Contractor will obtain a Maricopa County Air Quality Department permit as required under Rule 200 of the Maricopa County Air Pollution Control Rules and Regulations. This permit will require that a control plan to mitigate dust and tracking problems be submitted to the County for approval prior to issuance of the Earth Moving Permit. The control plan should be submitted to City for review prior to County submittal to ensure that all elements of the planned operation are covered. Please contact the Maricopa County Air Quality Department at 602-506-6010 for additional details.

In addition, all Contractors hauling fill or excavation materials where the haul exceeds five thousand (5,000) cubic yards, or when the duration of the haul is more

than ten (10) working days, are required to obtain a City haul permit before the hauling operation begins.

Prior to receiving a hauling permit, Contractor must submit the required certificate of insurance, a plan showing the proposed haul routes, and a complete schedule of the hauling operation to the City Transportation Division. Prior to submittal, Contractor should contact Engineering Services for complete details for issuance of a City haul permit.

3.9. LANDSCAPING AND IRRIGATION REQUIREMENTS

As applicable, Contractor shall be required to construct the landscape and irrigation improvements in accordance with the requirements of MAG Specifications Sections 430, 440, and 795, and the City of Tempe Public Works Department Standard Landscape and Irrigation Details and Specifications, latest edition (available online at <https://www.tempe.gov/government/public-works/engineering/standards-details>) In addition, the landscape plant establishment and maintenance period will be ninety (90) days.

3.10. SPECIFIC PRODUCTS OR BRANDS

In accordance with MAG Specification 106.4, specific brands and/or models of equipment, materials, or patented processes listed in the plans, specifications, standard details, and standard specifications are for demonstrative purposes only. They should not be construed as a sole source request for a specific product or brand. Contractor shall provide City with the required product data including, but not limited to, manufacturers' standard catalog cuts, brochures, diagrams, schedules, performance charts, illustrations, calculations, schematic drawings, printed installation, erection, application, and placing instructions, and other descriptive data related to the product in order for City to determine if the product is equivalent to the product listed for approval.

3.11. ENVIRONMENTAL REQUIREMENTS

3.11.1. Contractor covenants and agrees that it shall, at all times during the term of the Contract, and at its sole cost and expense, comply with and assume sole responsibility and liability under all environmental laws applicable to use of or operations at the project site by Contractor, its agents, assigns, and/or employees. Contractor agrees that should it or any of its agents, assigns, or employees know of (a) any violation of environmental laws relating to the project site, or (b) the escape, release, or threatened release of any hazardous materials in, on, under, or about the project site, Contractor shall promptly notify City in writing of such, and that it will provide all warnings of exposure to hazardous materials in, on, under, or about the project site, in strict compliance with all applicable environmental laws. Further, Contractor covenants and agrees that it shall at no time use, analyze, generate, manufacture, produce, transport, store, treat, release, dispose of, or permit the escape of, or otherwise deposit in, on, under, or about the project site, any hazardous materials, or permit or allow any of its agents, assigns, or employees to do so. Prior to use of the project site, Contractor shall provide

City an inventory of all equipment and materials stored and/or to be stored at the project site.

3.11.2. For purposes of this Contract, hazardous materials shall include but is not limited to, any and all substances, chemicals, wastes, sewage, or other materials that are now or hereafter regulated, controlled, or prohibited by any environmental laws, including, without limitation, any (a) substance defined as a “hazardous substance”, “extremely hazardous substance”, “hazardous material”, “hazardous chemical”, “hazardous waste”, “toxic substance”, or “air pollutant” by federal laws, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*, and all amendments thereto or other similar governmental restrictions; and (b) any chemical, compound, material, substance, or other matter that: (i) is a flammable explosive, asbestos, radioactive material, nuclear material, drug, vaccine, bacteria, virus, hazardous waste, toxic substance, injurious by itself or in combination with other materials; (ii) is controlled, designated in, or governed by any hazardous materials laws; (iii) gives rise to any reporting, notice, or publication requirements under any hazardous materials laws; or (iv) gives rise to any liability, responsibility, or duty on the part of City or Contractor with respect to any third person under any hazardous materials laws.

3.11.3. In addition, Contractor must comply with the following requirements:

- a. Non-pick-up sweepers will not be allowed except as required to make joints during chip sealing operations.
- b. Water flooding of trenches with potable water will not be permitted.
- c. All paints applied by sprayers shall be of a water-based type.
- d. Provisions shall be made to prevent the discharge of construction silt, mud, and debris into City storm drains or streets.
- e. Spills of oil, gas, chemical, or any other hazardous materials must be reported and removed by approved procedures. Mitigation measures shall be taken to prevent contamination of construction storage sites.
- f. Concrete waste must be disposed of in an approved location and at least twenty-five (25) feet from established landscaping.
- g. City refuse roll-off containers shall be used on City projects unless otherwise directed by the City of Tempe Solid Waste Supervisor. If you should have any questions concerning any of the requirements or charges, please contact the Solid Waste Supervisor, at 480-350-8268.

- h. Hazardous wastes shall not be discharged into City's sanitary sewers or storm drainage system. All waste products shall be disposed of in accordance with applicable regulations.
- i. When archaeological features are encountered or unearthed, Contractor shall promptly report to the Director of the Arizona State Museum and to City. Excavation shall not resume in the identified area until approved by City Engineer.
- j. Contractor shall take whatever steps, procedures, or means to prevent abnormal, material spillage, or tracking conditions due to their construction operations in connection with the Contract. The dust control measures shall be maintained at all times during construction of the project, to the satisfaction of City Engineer, in accordance with Rule 200 of the Maricopa County Health Department Air Pollution Control Regulations, which require that an Earth Moving Permit be issued and a Control Plan be approved prior to commencement of work. Contact Maricopa County at 602-506-6700 for details.
- k. Contractor shall comply with all applicable federal regulations concerning National Pollutant Discharge Elimination System (NPDES) permits for storm discharges from construction sites.
- l. All materials supplied by Contractor shall be one hundred percent (100%) asbestos free unless otherwise approved by City.

No additional payment will be made for compliance with the above items.

In addition to the above, the use of new products made with reclaimed material and that meet project specifications is encouraged.

3.11.4. Federal Environmental Mitigation measures

- a. See Technical Specifications for Federal Environmental Mitigation.

These mitigation measures are not subject to change without prior written approval from ADOT Environmental Planning.

3.12. SAFETY REQUIREMENTS

Contractor shall comply with all applicable federal, state, and local health and safety regulations, ordinances, and requirements including, but not limited to, the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*), and all rules, regulations, and orders adopted pursuant thereto.

3.13. TRAFFIC CONTROL

- 3.13.1. All traffic shall be regulated in accordance with the MAG Specifications; the City of Tempe Traffic Barricade Manual, latest edition; the Manual on Uniform Traffic Control Devices (MUTCD); and any special provisions included herein.

At the time of the pre-construction conference, Contractor shall designate an American Traffic Safety Services Association (ATSSA) certified individual, who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures, as necessary, to ensure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard including, but not limited to, motor vehicle accidents. City shall designate a representative who will oversee and monitor Contractor's agent and enforce City's requirements set forth herein. Contractor covenants to give City any assignment and/or assurances which may be necessary to effect such right of direct enforcement.

Contractor is solely responsible for, and assumes full liability for, the traffic control relating to this project. Contractor shall submit a final traffic control plan to City for its review and approval no less than one (1) week prior to commencing work under this Contract. Traffic, as referenced herein, shall include any and all motor vehicles, bicyclists, and pedestrian traffic on roadways, sidewalks, bicycle paths, alleys, and/or rights of way at, attendant to, and/or adjacent to the Project.

In the event alteration of traffic control is required for work or services provided herein, alterations shall be made in accordance with the latest edition of Part VI of the Manual on Uniform Traffic Control Devices, "Traffic Control for Streets and Highway Construction and Maintenance Operations," or the City of Tempe Traffic Barricade Manual, latest edition. The most restrictive provision shall apply. Unless identified otherwise in the Technical Specifications, City will undertake no responsibility or expenses relating to measurement, payment, or alteration of traffic control. All costs or expenses related to traffic control shall be considered incidental to other pay items. Any and all revisions relating to traffic and/or traffic control shall be submitted to City for review and approval in City's sole discretion.

Contractor is solely responsible for any and all loss, damage, replacement, or repair necessitated to any traffic signal equipment, traffic signal conduit, and/or circuits, arising from or relating to Contractor's work or services performed hereunder. Contractor shall have all repairs performed immediately at its sole expense by a licensed electrical contractor with experience in traffic signal repair, subject to pre-approval by City. Any and all repairs and/or replacement costs expended by City in this regard shall be reimbursed by Contractor at twice City's actual cost.

Contractor shall notify all adjacent or affected residents or businesses at least forty-eight (48) hours in advance of any street, alley, sidewalk, and/or driveway closures or modifications, and make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area. Pedestrian access shall be maintained along the length of the project at all times per the requirements of the Americans with Disabilities Act and as approved by City. Contractor shall abide by applicable speed limits. Additional information may be obtained by contacting the City Transportation Division at 480-350-8219.

3.13.2. Temporary Barricades

Temporary barricades shall be regulated in accordance with the City of Tempe Traffic Barricade Manual, latest edition.

No additional payment by City will be made to Contractor or its subcontractor for temporary barricades, unless otherwise specified in the bid.

3.14. CLEAN-UP

Contractor agrees and covenants to adequately protect the work site, adjacent property, and the public in all phases of the work and/or services provided herein. Contractor shall be solely responsible for all damages or injuries due to action or neglect pursuant to this section. Contractor shall maintain access to all phases of the project pending inspection by City. Contractor hereby agrees to the following as to the job site: The project limits shall be cleaned of all trash, debris, construction materials and equipment at the completion of each workday. No equipment, vehicles or materials shall be stored on site during non-working hours, holidays or non-working days unless otherwise approved by the City Engineer or designee. No payment shall be made for this work; the cost being considered included in other items of work. All new construction shall be completed within the right-of-way or temporary construction easement areas shown on the project plans. Contractor agrees to continually keep the job site free from debris, waste, and accumulation of materials; immediately clean up any oil, fuel, or chemical spills and take any and all remediation necessary; keep machinery clean and free of weeds and debris; remove all construction stains, smears, and debris from finished surfaces; perform site preparation to limit the spread of weeds, debris, and other nuisances prior to submission of final invoice to City; and remove all equipment, materials, tools, and Contractor's personal property prior to submission of final invoice to City.

In accordance with MAG Specifications Section 105, Contractor shall respond within twenty-four (24) hours after notice by City of any defects and/or maintenance requests to immediately remedy the condition of the job site. Should Contractor fail to respond promptly as set forth herein, City shall correct the job site at the expense of Contractor and recover all attendant costs.

3.15. APPROXIMATE QUANTITIES

It is expressly understood and agreed by the parties hereto that the quantities of the various classes of work to be done and material to be furnished under this Contract, which have been estimated, as stated in the Invitation for Bids, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the bids offered for the work under this Contract. Contractor further agrees that City will not be held responsible for any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done.

If any error, omission, or misstatement is found to occur in the estimated quantities, the same shall not invalidate this Contract or release Contractor from the execution and completion of the whole or any part of the work in accordance with the plans and specifications herein mentioned, and for the prices herein agreed upon and fixed

therefore, or excuse Contractor from any of the obligations or liabilities hereunder, or entitle Contractor to any damages or compensation, except as may be provided for in this Contract.

3.16. BLUE STAKE & CALL BEFORE YOU DIG

Contractor is required to use Arizona Blue Stake, Inc., at 602-263-1100, to comply with the statutory requirements in A.R.S. title 40, chapter 2, article 6.3 (Underground Facilities); A.R.S. § 40-360.21, *et seq.*, as amended from time to time.

Where railroad property may be impacted, Contractor must also notify and secure a current Call Before You Dig (CBUD) Ticket at 1-800-336-9193 from Union Pacific Railroad's Response Management Communications Center (RMCC), wait for the site to be marked, respect all markings, and dig with care.

3.17. PROTECTION OF EXISTING FACILITIES

Contractor shall protect all existing facilities during construction or work. Utility poles that may be affected by construction activities shall be protected and/or braced by Contractor. Contractor shall notify the appropriate utility company or agency of any construction or work that may affect their facilities and state the course of action which will be taken to protect such facilities.

3.18. UNDERGROUND UTILITIES

Underground utilities indicated on the plans are in accordance with maps furnished by City and by each utility company. The locations are approximate and require verification prior to construction, as mandated by the City of Tempe Utility Permit and Construction Manual, latest edition, available at <https://www.tempe.gov/government/public-works/engineering/utility-plan-review-inspection>

3.19. RELOCATION OF UTILITIES

All utilities in conflict with the new work will be relocated by the utility company, except as otherwise provided in the plans and specifications.

3.20. NOTIFICATION OF PROPERTY OWNERS

Contractor shall notify all property owners who may be affected by the proposed construction activities of the scope and duration of the construction activities at least forty-eight (48) hours in advance of the start of any work or construction.

3.21. ACCESS

Contractor shall maintain public access to businesses adjacent to the job site at all times during construction. Where property has more than one access point, no more than one access point shall be restricted or closed at any one time. If only one driveway exists, access shall be maintained to at least one-half of the driveway at all times. Access to adjacent private driveways shall be maintained by Contractor during all non-working hours.

3.22. UTILITY AND PUBLIC AGENCY CONSTRUCTION CLEARANCE AGREEMENT

Utilities and other public agencies may require all contractors, if working on their facilities, to sign a standard form "Construction Clearance Agreement," or other form of agreement, prior to issuance of a license. Contractor shall execute the Construction Clearance Agreement with the utility or public agency, if required, and furnish a copy to City prior to proceeding with any construction on utility or public agency facilities. This agreement sets forth the requirements to complete the proposed work in an allotted time frame or to pay full costs for others to complete. It also obligates Contractor to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances including, but not limited to, the OSHA Permit Required Confined Space rules, as amended.

3.23. GOVERNMENT APPROVALS AND PERMITS

- 3.23.1.** Unless otherwise provided, Contractor shall obtain all necessary permits, approvals, and licenses required for the commencement of the work from any government or quasi-government entity having jurisdiction over the project at its sole expense. Contractor expressly covenants and agrees that it will obtain any and all necessary environmental permits and/or file the necessary environmental notices at its cost prior to undertaking work or performing services hereunder.
- 3.23.2.** Copies of all permits and notices shall be provided to City prior to starting any work or performing services pursuant to the permitted activity. This provision does not constitute an assumption by City of an obligation of any kind for violation of said permit or notice requirements.
- 3.23.3.** City agrees to be responsible for City's own review and permit(s) fees for building and demolition permits only. In addition, City shall bear its own review fees for grading and drainage, water, sewer, and landscaping. City may agree to pay utility design fees for permanent services in its sole discretion. Contractor shall be solely responsible for any and all other permit(s) and review fees not specifically designated herein.
- 3.23.4.** Contractor is responsible for all costs of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until completion of the project. Arrangements for water at the site or for construction purposes are Contractor's sole responsibility.

3.24. KEY CONTACTS

During the bidding process, any questions shall be submitted to contractor_support@tempe.gov

Blue Stake Center	602-263-1100
Call Before You Dig (UPRR)	800-336-9193

3.25. DUST PREVENTION

Contractor shall take all necessary steps to ensure dust-free conditions on property within the City to the satisfaction of the City Engineer, and fully comply with A.R.S. § 49-474.06 and Maricopa County Air Pollution Control Rules and Regulations Rule 200 § 305-306, concerning dust-generating operations as defined by Maricopa County Rule 310. In any operation where more than one-tenth of an acre of surface area is disturbed and/or when unpaved onsite haul roads are used, Contractor shall obtain a Maricopa County dust control permit. Contractor shall provide assurance that subcontractors used on the dust-generating portion of the Project are registered with the Maricopa County Air Quality Department and that only certified PM-10 efficient street sweepers shall be used to sweep City streets, as required by Tempe City Code Sec. 26A-25. Contractor shall provide its subcontractor(s)' registration number and dust control plan, if applicable, to the City Engineer prior to engaging in any dust-generating activities. Project related hauling activities to and/or from storage located on property owned by City shall be listed on the approved dust control permit and shall be subject to control measures in the approved dust control plan. When hauling fill or excavation materials exceeding five thousand (5,000) cubic yards or when the duration of the haul is more than ten (10) working days, Contractor shall obtain a City haul permit before the hauling operation begins. Prior to receiving a haul permit, Contractor must submit the required certificate of insurance, a plan showing the proposed haul routes, and a complete schedule of the hauling operation to the City Engineer.

All costs associated with the submittal, approval, and implementation of the permit and dust control plan as approved by Maricopa County Air Quality Department shall be borne solely by Contractor. Failure to fully comply with this provision shall be considered a material breach of the Contract, and shall subject the Contract to termination by the City, in addition to other legal remedies.

3.26. COMPLAINTS FROM THE GENERAL PUBLIC

Contractor shall respond to any and all claims or complaints from the general public in a reasonable and prompt manner. Information on any complaint shall be reported to the Project Manager promptly, but in no event more than forty-eight (48) hours of receipt of complaint.

3.27. PREVAILING WAGE

This Contract is subject to Chapter 26A, Article III of the Tempe City Code. All capitalized terms in this Section carry the definitions contained in Section 26A-55 of the Tempe City Code unless otherwise specified.

- 3.28.1 Requirement to Pay Prevailing Wage.** Contractor and every subcontractor under this Contract shall pay every Covered Employee employed under this Contract not less than the Prevailing Wage Rate, including fringe benefits, on all hours worked on the site of the work as determined by the U.S. Department of Labor under the provisions of the Davis-Bacon Act.
- 3.28.2 Posting.** Contractor and every subcontractor shall post the applicable Davis-Bacon Wage Determination and the Davis-Bacon Poster (WH-1321) on the job site in a prominent and accessible place where they can be easily seen by workers.
- 3.28.3 Payroll.** Contractor and subcontractors must document that they pay laborers, mechanics, and other workers employed under the Contract the Prevailing Wage Rate and fringe benefits listed in the Davis-Bacon Wage Determination published on the System for Award Management (SAM) website and maintain payroll records for one (1) year after the final closeout of the Contract by the City, and the City shall have the right to inspect all payroll records of Contractor and subcontractors. Contractor and subcontractors must file with the City on a weekly basis both Federal Wage Hours Form 347 (Form WH-37) and a signed statement of compliance indicating the payrolls are correct and complete and that each laborer, mechanic, and other worker employed under the Contract has been paid not less than the locally Prevailing Wage Rate and fringe benefits. If the Contract is a federally funded or assisted contract, Contractor and subcontractors must continue to follow all payroll requirements of the Davis-Bacon Act.
- 3.28.4 Audit.** Contractor agrees that the City is authorized to have access to all records necessary to determine compliance with Chapter 26A, Article III of the Tempe City Code throughout the duration of the Contract.
- 3.28.5 Enforcement.** If Contractor or any subcontractor fails to comply with the requirements of this Section and Chapter 26A, Article III of the Tempe City Code, Contractor shall remedy the noncompliance, correct payroll, and pay Prevailing Wages by the next pay period after receiving a written notice from the City and provide evidence satisfactory to the Public Works Department Director or designee that the requirements have been met. If Contractor or subcontractor fails to correct payroll and pay prevailing wages by the next pay period, the City shall not approve payment to the Contractor or subcontractor until the Contractor or subcontractor provides evidence satisfactory to the City that the requirements have been met.
- 3.28.6 Compliance.** Contractor shall comply with all other aspects of Chapter 26A, Article III of the Tempe City Code even if not specifically listed in this Section.

3.28. SECURE FACILITY ACCESS

Contracts that call for work to be done in any of the City's secure facilities are subject to the City's Secure Facility Access Requirements, which are incorporated herein.

4. INSTRUCTION TO BIDDERS

4.1. SEALED BIDS

All bids MUST be submitted through the City's PMWeb Software System at:

<https://tempe-az.pmweb.com/pmweb/>

and must be received by 9:00 a.m. (Arizona time) February 5, 2025. At that time, bids will be electronically opened, the name of the bidder, the date and time the bid was received, and amount of the bid will be publicly read online in an electronic meeting room. **You are required to register as a Plan holder and receive your login credentials for the City's PMWeb Software System no later than two (2) business days prior to the Bid Opening Date.** All registered Plan holders for this project will be provided a link to this electronic meeting room the morning of the bid opening. Bids received after the time specified will not be accepted.

All bids received will be opened, documented and posted on the City of Tempe Engineering website within one hour of the bid opening at <https://www.tempe.gov/government/public-works/engineering/bid-results>

The Bidder assumes the responsibility for having the bid submitted on time via the City's PMWeb Software System shown above. Any Bids received after the Bid Due Date and Time will not have the ability to submit a bid and will not be considered. The Bidder assumes the risk of any delay in the electronic processing of the Contractor's submittal through both parties (Contractor and City) networks. Bidders must allow adequate time to ensure that the e-mail is timely received by the City's PMWeb Software System at <https://tempe-az.pmweb.com/pmweb/> All times referenced are Tempe, Arizona local times. Bidders agree to accept the time and date that is recorded on the received bid as the official time.

All documents required as part of the "bid package" shall be completed, scanned in a PDF format, and added as an attachment through the City's PMWeb Software System. Any bid documents received in the .zip format will be rejected by the City's server, and the bid will be deemed nonresponsive.

Please see the BIDDER'S CHECK SHEET in the Exhibits section of this Invitation for Bid.

Each bid shall be accompanied by a scanned copy of a bid guarantee for ten percent (10%) of the amount of the bid. See the subsection of Instructions to Bidders titled Bid Security. The bidder must supply the original bid bond upon request.

Each bid also shall be accompanied by the bidder's current loss history information from all of the bidder's insurance carriers. The information specific to workers' compensation insurance carriers must include a three-year (3-year) history of the bidder's Experience Modification Factor (EMOD) and its loss ratio.

In addition, each bidder is required to submit an affidavit certifying that its company and all of its subcontractors, defined as doing work in excess of \$30,000 as determined at the start of each project, will have and will continue to have during the

course of the Contract, health insurance in force for all project employees. The employer must also offer insurance to project employees for their eligible dependents.

Plans and specifications are available for download from the City of Tempe Engineering Division at www.tempe.gov/engprojectsbidding When the documents are downloaded, **Contractors are required to register on-line as a Plan holder to receive notification of project addenda and login credentials to the City's PMWeb Software System no later than two (2) business days prior to the Bid Opening Date.** If addenda are issued for this project the City of Tempe will attempt to notify plan holders at the email address provided. It is the Contractor's sole responsibility to confirm that they have received all addenda prior to submitting a bid. The City is not responsible for providing notification or addenda to Contractors.

When it is in the best interests of the City of Tempe, the City may cancel this solicitation, or may reject any and all bids in whole or in part, or may waive any informalities in the bids received.

Award will be made, or bids rejected within 60 calendar days after bid opening.

During the bidding process, any questions shall be submitted to contractor_support@tempe.gov no later than 4:00 p.m. (Arizona time), January 29, 2025. Any questions submitted after this deadline will not be considered.

Anyone wishing to receive future notices through automatic notification by email can register their company name and email address at <https://email.tempe.gov/requests-for-engineering-bids>

4.2. ADDENDA

Addenda issued prior to the deadline for bidding shall be attached to and made a part of the Contract. Contractor shall acknowledge receipt of all addenda on the Competitive Sealed Bid form.

4.3. BID SECURITY

Each bid shall be accompanied by a bid guarantee for ten percent (10%) of the amount of the bid, executed in accordance with the requirements of A.R.S. § 34-201, *et seq.*, as amended from time to time. The bid guarantee shall be in the form of a certified check, cashier's check, or surety bond. If a surety bond is used, the bond shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Arizona, issued by the director of the department of insurance pursuant to Arizona Revised Statutes, title 20, chapter 2, article 1, as amended from time to time. The surety bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. § 7-101 are satisfied. Additionally, the City requires that a bonding company, liability insurance carrier, or excess insurance carrier issuing a surety bond have a Financial Strength Rating of A- or better and a Financial Size Category of VII or higher, as listed in the most recent "Best's Key Rating Guide – Property/Casualty," published by A.M. Best Company.

Bid guarantees shall be returned to bidders whose bids are not accepted, and to the successful Contractor upon its execution of the Contract and delivery of a satisfactory performance bond, payment bond, and certificate of insurance.

4.4. BIDS

Bids shall be properly executed upon the Competitive Sealed Bid Forms attached and made a part of this Contract. Electronic signatures will not be accepted. The completed forms shall be without interlineations, alterations, or erasures. Unit prices should be rounded to the nearest whole cent (two spaces behind the decimal point). In case of an error in the extension of unit prices and the totals, the unit price shall govern.

Bids shall not contain any recapitulations of the work to be done. Alternative bids will not be considered except as called for. No oral or electronic bids or modifications will be considered.

4.5. IRREGULAR BIDS

Bids may be considered irregular and may be rejected if any of the unit prices quoted in the bidding schedule are unbalanced, either above or below the amount of a reasonable bid price, to the potential detriment of City.

4.6. BIDDING PHASE REQUIREMENTS

4.6.1. Pursuant to A.R.S. § 1-502, any individual/sole proprietor (unincorporated business) who responds to this Invitation for Bids by signing the Competitive Sealed Bid Forms shall also sign a sworn Affidavit Demonstrating Lawful Presence in the United States (Form 8.10) and present one of the documents listed on the affidavit to verify lawful presence in the United States. Failure to sign said affidavit and present one of the listed documents **shall result in rejection of the bid.**

4.6.2. Each bid shall be accompanied, in a separate envelope, by the bidder's current loss history information from all of the bidder's insurance carriers. The information specific to workers' compensation insurance carriers must include a three-year (3-year) history of the bidder's Experience Modification Factor (EMOD) and its loss ratio. This information must be provided with the bidder's proposal.

4.7. PRE-CONTRACT AWARD REQUIREMENTS

4.7.1. Contractor shall provide a copy of its written health and safety program and any required employee training records or certificates.

4.7.2. Taxes. All applicable taxes due and owing by Contractor and all subcontractors shall be considered by City in determining award. At all times, the determination of applicable taxes and rates, and remitting taxes owed, shall be the sole responsibility of Contractor.

It is the sole responsibility of the Contractor and any subcontractors to obtain a Letter of Good Standing from the Arizona Department of Revenue prior to Contract award. Go to <https://azdor.gov/forms/collections-forms/tax-clearance-application> and obtain directions regarding how to submit for the Letter of Good Standing. Submit a copy of the Letter of Good Standing to contractor_support@tempe.gov. The Letter of Good Standing must have been issued within the last 90 days from the award date of the contract.

In the event a “denial” letter is received from the Arizona Department of Revenue, should any taxes owed by Contractor or any subcontractors not be remitted in full prior to Contract award along with the receipt of a Letter of Good Standing from Contractor and each subcontractor, the bid shall be considered non-responsive and rejected by the City.

4.8. BID QUANTITIES

The quantities listed in the specifications are for bid purposes. The actual quantities provided to Contractor may be adjusted to accommodate field requirements.

4.9. PROTEST PROCEDURE

A bidder or contractor who believes they are aggrieved in connection with the City’s solicitation or award of a contract may file a protest with the Engineering Division procurement office, as set forth in Section 26A-21 of the Tempe City Code.

4.10. NO LOCAL PREFERENCE

In accordance with 49 CFR 18.36(c)(2), Tempe will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

5. EVALUATION AND AWARD

5.1. AWARD AND EXECUTION OF CONTRACT

Except as provided herein to the contrary, the respective rights and remedies of the parties to this Contract shall be cumulative and in addition to any rights and remedies not specified in this Contract. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Contract, and that this Contract supersedes any and all prior negotiations, arrangements, representations, and understandings between the parties. No provision of this Contract may be amended except by an agreement in writing signed by City. This Contract, including exhibits and attachments attached hereto, signed by City and Contractor, constitutes the entire agreement between the parties.

This Contract shall be in full force and effect only after it has been awarded by the City Council of Tempe, Arizona.

Contractor shall execute the Contract and all exhibits and attachments thereto, counterparts permitted, within ten (10) calendar days after being given formal notice of City Council's award of the Contract.

Contractor's failure to execute this Contract and to file satisfactory contract bonds and insurance certificates as provided herein within ten (10) calendar days after being given formal notice of Contract award shall result in immediate cancellation of the award.

5.2. PLANS TO THE SUCCESSFUL BIDDER

The successful bidder may obtain (7) sets of plans and specifications for this project from the office of City Engineer, at no cost.

5.3. ISSUANCE OF THE NOTICE TO PROCEED

Notwithstanding unforeseeable circumstances, the Notice to Proceed shall be issued by City within sixty (60) calendar days of contract award.

6. GENERAL TERMS AND CONDITIONS

6.1. LIQUIDATED DAMAGES

Unless otherwise specified, liquidated damages will be applied in accordance with the MAG Specifications 108.9. Completion of the work as stated in this Contract is the same as completion of the work as stated in MAG Specifications 108.9. Damages will be applied at the amounts specified in MAG Specifications Table 108-1.

6.2. ESCROW AND HOLDBACK

In the event of a dispute arising under this Contract that is not summarily resolved by the parties concerning any withholding or nonpayment of funds by the City, the parties agree that said disputed funds may be held back and placed into a neutral escrow account, in the form of an interest bearing savings account, until the dispute is resolved. By signing this Contract, Contractor acknowledges and agrees to the deposit of any and all disputed funds into an escrow account into the financial institution of the City's election.

Except as to those amounts withheld, at City's direction, the balance of the funds shall be paid to Contractor or subcontractor(s), as set forth by Arizona law. Any funds remitted to City in excess of the amount allowed by statute will be reimbursed to Contractor. In no event shall City be liable to Contractor for damages resulting from a claimed loss due to payment of the excess funds or due to a delay in reimbursing the excess payment.

Once per calendar month, the financial institution shall furnish the City and Contractor with a statement reflecting the funds held as of the last day of the preceding calendar month, and showing the transactions for that prior month. At the request of Contractor or City, the financial institution shall furnish both parties with

an interim statement showing funds held as of the 25th day of the most recent month or, if a non-business day, the following business day of that month.

Contractor acknowledges and agrees that all fees, costs, and charges imposed by any financial institution in connection with the maintenance and administration of the disputed funds shall be charged to, and paid by, Contractor. The funds shall be free of any claim for such fees, costs, or charges. However, the financial institution may obtain payment for any such accrued fees, costs, and charges owed by Contractor related to said funds out of available interest earned on the funds, or deduct the same from any funds to be paid to Contractor, according to written disbursement instructions from City.

The parties acknowledge and agree that in the event of no resolution between the parties concerning distribution of the disputed funds, the funds may be interplead in a court of competent jurisdiction in Maricopa County, Arizona.

It is understood that financial institution shall not be deemed liable, nor responsible, for the collectability of any funds assigned or held in connection with this provision.

6.3. TERMINATION

In addition to MAG Specifications 108.11, City, at its sole discretion, may terminate this Contract for convenience or abandon any portion of the project for which services have not been performed by Contractor, upon fourteen (14) days' written notice delivered to Contractor personally or by certified mail.

Immediately after receiving such notice, Contractor shall discontinue advancing the services under this Contract and proceed to close said operations under this Contract. Contractor shall appraise the services it has completed and submit an appraisal to City for evaluation. City shall have the right to inspect and approve Contractor's work to appraise the services completed.

Contractor shall deliver to City all drawings, special provisions, field survey notes, reports, estimates, and any and all other documents or work product generated by Contractor under the Contract, entirely or partially completed, together with all unused materials supplied by City.

In the event of such termination or abandonment, Contractor shall be paid for services approved and accepted by City that Contractor performed prior to receipt of said notice of termination, including reimbursable expenses previously incurred.

If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of work completed, as reviewed and approved by City, based upon the scope of work. However, in no event shall the fee exceed the full cost of the Contract.

If City terminates or abandons the Contract, City shall make final payment within sixty (60) days after Contractor has delivered the last of the completed items and City has approved and determined the final fee.

In the event this Contract is terminated or abandoned prior to completion, City may complete the work, or enter into a Contract with another party for the remaining work.

In no event shall the City be obligated, liable, or responsible for performance of the obligations set forth herein, any provision of this Contract, or any expenses incurred by Contractor in securing this Contract (including, but not limited to, purchasing insurance coverage, performance bonds, or other security), at any time, including prior to or following City Council's approval of this Contract, should funds not be appropriated by the City through its Council or staff, in order to complete the Project. In the event that funds are not appropriated to meet or complete this Contract, then City shall immediately provide notice to Contractor of such non-allocation and terminate the Contract. City shall incur no resulting liabilities or penalties for termination under this Section.

This Contract may be terminated pursuant to A.R.S. § 38-511.

6.4. DEFAULT PROVISIONS

Contractor shall be deemed in default under this Contract upon the occurrence of any of the following events:

- 6.4.1.** Contractor provides material that does not meet the specifications of the Contract and fails to cure such non-performance within ten (10) days after written notice from City;
- 6.4.2.** Contractor fails to adequately perform the services set forth in the plans and specifications of and fails to cure such non-performance within ten (10) days after written notice from City;
- 6.4.3.** Contractor fails to complete the work required or furnish the materials required within the time stipulated in the Contract and fails to cure such non-performance within ten (10) days after written notice from City;
- 6.4.4.** Contractor fails to make progress in the performance of the Contract and/or gives City reason to believe that Contractor will not or cannot perform the requirements of the Contract and fails to cure such non-performance within ten (10) days after written notice from City;
- 6.4.5.** Contractor fails to perform any other term or condition of this Contract and fails to cure such non-performance within ten (10) days after written notice from City.

In the case of default, City may terminate the Contract, in whole or in part, and/or may resort to any other remedy as provided by law. City may also perform any test or analysis on materials for compliance with the specifications of the Contract. Contractor shall pay the actual expense of testing if the results of any test or analysis indicate a material to be non-compliant with the specifications.

6.5. WARRANTY

Contractor warrants to City that the construction, including all materials and equipment furnished as part of the construction, shall be new, unless otherwise specified in the Specifications and Contract; of good quality; in conformance with the Specifications; and free of defects in materials and workmanship. Contractor's warranty obligation excludes defects caused by abuse, alterations, or unreasonable failure to maintain the construction by persons other than Contractor, Subcontractors, or others under Contractor's control. Nothing in this warranty shall limit any manufacturer's warranty which provides City with greater warranty rights than set forth herein. Contractor will provide City with all manufacturers' warranties and operation and maintenance manuals upon substantial completion of the work. Contractor's warranty shall be for one (1) year and will commence for all portions of the work upon final acceptance of the entire work as determined by City under the Contract. All statutory or other warranties, express or implied, related to latent defects will remain in force and are not limited by this provision.

6.6. OWNERSHIP OF DOCUMENTS / INFRINGEMENT OF PATENT OR COPYRIGHT

All work products (electronically or manually generated) including, but not limited to, plans, specifications, cost estimates, tracings, studies, design analyses, original mylar drawings, computer aided drafting and design (CADD) file diskettes which reflect all final drawings, and other related products which are prepared in the performance of this Contract, are the property of City and are to be delivered to City before the final payment is made to Contractor. City shall retain ownership of these original drawings, however, if approved in writing by City, Contractor may retain the original drawings and supply City with reproducible copies. Contractor shall endorse by their professional seal all plans and special provisions furnished by them.

In the event these documents are used for another project without further consultation with Contractor, City agrees to indemnify and hold Contractor harmless from any claim arising from the reuse of the documents. City shall remove Contractor's seal and title block from such documents.

Contractor agrees to save, keep, hold harmless, and fully indemnify City, and any of its officers, officials, employees, and agents, from any and all damages, costs, or expenses, in law or equity, that may at any time arise out of any infringement of the patent right, copyright, or trademark of any person, persons, or entity in consequence of use by City, or by any of its officers, officials, employees, or agents, of materials supplied by Contractor, and of which Contractor is not a patentee or signee or lawfully entitled to sell the same.

Contractor agrees to indemnify and hold harmless City and its officers, officials, employees, and agents from any and all license, royalty, and proprietary fees or costs, including legal costs, which may arise out of City's purchase and use of goods supplied by Contractor.

It is expressly agreed by Contractor that these covenants are irrevocable and perpetual.

6.7. COMPLIANCE WITH STATE AND FEDERAL LAWS

- 6.7.1. Specially Designated Nationals and Blocked Persons List.** Contractor represents and warrants to City that neither Contractor nor any affiliate or representative of Contractor (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (“Order”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering.
- 6.7.2. Employment Laws.** Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations, and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules, and regulations, including, but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Legal Arizona Workers Act (LAWA), and all amendments thereto, along with all attendant laws, rules, and regulations. Contractor acknowledges that a breach of this warranty is a material breach of this Contract and that Contractor is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the right to inspect the documents of any and all contractors, subcontractors, and sub-subcontractors performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend, and hold City harmless for, from, and against all losses and liabilities arising from any and all violations thereof.
- 6.7.3. Equal Opportunity.** City is an equal opportunity, affirmative action employer. Contractor hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, creed, religion, ancestry, national origin, physical or mental disability, age, sex, gender, sexual orientation, gender identity, marital status, or veteran status, with regard to discharging obligations under this Contract. Contractor covenants and agrees that it will comply in all respects with the applicable provisions of Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans’ Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity. Contractor agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting for the provisions of this clause.

6.7.4. Federal Employer Sanctions Law. Contractor understands and acknowledges the applicability of the Federal Employment Eligibility Verification Requirements (“Requirements”), including, but not limited to, Executive Order 12989, Federal Acquisition Regulation E-Verify clause (73 F.R. 67704), and 8 U.S.C. § 1324, *et seq.*, as amended from time to time. Contractor warrants current compliance with these and all Federal immigration laws and regulations that relate to their employees, on behalf of Contractor and all of its subcontractors, including the use of E-Verify to confirm the employment eligibility of all persons hired during a Contract term and current employees performing under the Contract within the United States. Should the Requirements conflict with any applicable state laws or regulations as referenced in 6.7.2., the Requirements shall prevail.

6.7.5. Boycott. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract/Agreement that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.

6.7.6. Compliance with Ariz. Rev. Stat. § 35-394. Contractor hereby certifies that it does not currently, and agrees for the duration of this Agreement, that Contractor will not, use: 1. The forced labor of ethnic Uyghurs in the People’s Republic of China; 2. Any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; or 3. Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China. Contractor hereby agrees to indemnify and hold harmless the City, its officials, employees, and agents from any claims or causes of action relating to the City’s action based upon reliance upon this representation, including the payment of all costs and attorney fees incurred by the City in defending such as action.

Contractor further agrees to include the provisions of this section in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

6.7.7. Burial and Cultural Discoveries. Personnel working on projects involving ground-disturbing activity are required to comply with the Salt River Pima-Maricopa Indian Community (SRPMIC) Statement on Burials and Cultural Resource Discoveries (the “Statement”), a copy of which can be obtained from the City of Tempe Historical Preservation Office upon request at 480-350-8870. To comply with the Statement, Contractor and its’ agents are prohibited from publicly releasing information about archeological findings or recording (through photos, video, or other imaging) archaeological resources, including human remains, funerary objects, or other discoveries.

6.8. ANTIDISCRIMINATION

Contractor shall not refuse to hire or employ or bar or discharge from employment any person, or discriminate against such person in compensation, conditions, or privileges of employment because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status. Contractor shall provide a copy of its antidiscrimination

policy to City to confirm compliance with this requirement or attest in writing to compliance based upon criteria outlined on Form 8.10.

6.9. JURISDICTION

This Contract will be deemed to be made under, and will be construed in accordance with and governed by, the laws of the State of Arizona, without regard to the conflicts or choice of law provisions. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought in the Superior Court of Arizona in and for Maricopa County, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

6.10. DISPUTE RESOLUTION

The parties may mutually agree to submit any dispute arising under this Contract to binding arbitration, conducted by a sole arbitrator mutually agreed upon by the parties, to hear and render a decision to resolve said dispute. The arbitration shall be held in Tempe, Arizona, subject to the laws of the State of Arizona. Each party shall bear its own costs and attorney's fees. A decision shall be made by the arbitrator within seven (7) calendar days of the arbitration hearing.

6.11. SUCCESSORS AND ASSIGNS

This Contract shall not be assignable except at the written consent of City, and it shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

6.12. NON-WAIVER

The failure of either party to enforce any of the provisions of this Contract, or to require performance by the other party of any of the provisions of this Contract, will not be construed as a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof or the right of either party to thereafter enforce each provision.

6.13. SURVIVAL

All warranties, representations, and indemnifications by Contractor will survive the completion or termination of this Contract.

6.14. SEVERABILITY

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

6.15. INTEGRATION

This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

6.16. TIME IS OF THE ESSENCE

Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence.

6.17. THIRD PARTY BENEFICIARY

This Contract will not be construed to give any rights or benefits in the Contract to anyone other than City and Contractor. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of City and Contractor and not for the benefit of any other party.

6.18. CONFLICT OF INTEREST

Contractor agrees to disclose any financial or economic interest with the project property, or any property affected by the project, existing prior to the execution of this Contract. Further, Contractor agrees to disclose any financial or economic interest with the project property, or any property affected by the project, if Contractor gains such interest during the course of this Contract.

Contractor's gains of financial or economic interest in the project during the course of this Contract may be grounds for terminating this Contract. Any decision to terminate the Contract shall be at the sole discretion of City.

Contractor shall not engage the services, on this Contract, of any present or former City employee who was involved as a decision maker in the selection or approval processes, or who negotiated or approved billings or Contract modifications for this Contract.

6.19. COOPERATION AND FURTHER DOCUMENTATION

Contractor agrees to provide City such duly executed documents as may be reasonably requested by City to implement the intent of this Contract.

This Contract shall be in full force and effect only when it has been approved by the City Council of the City of Tempe, Arizona, and when executed by the duly authorized City officials and the duly authorized agent of Contractor.

Each proposed subcontractor for this project must be approved by City before that subcontractor may work on the project. For the approval process, Contractor shall obtain from each subcontractor, and submit to City, a completed ADOT Procurement Subcontractor Request Form (SRF), Exhibit 8.12.

Contractor also shall provide City with a complete copy of each executed subcontract and purchase order for this project.

6.20. UNAUTHORIZED FIREARMS & EXPLOSIVES

No person conducting business on City property shall carry a firearm or explosive of any type. This requirement shall also apply to persons who maintain a concealed weapons permit.

6.21. NOTICES TO CITY ENGINEER

All notices to the City relating to this Contract should be sent to the following individual, who is also the administrator of this Contract.

Bike Lanes/ Pedestrian Improvements – Scottsdale Road from Curry Rd. to Continental Dr.
Mark A. Weber, P.E.
Deputy Public Works Director/
City Engineer
Public Works Department
Engineering Division
31 E. Fifth Street, Mail Code 01-8
Tempe, Arizona 85281
480-350-8817

6.22. NOTICES TO CONTRACTOR

(To be completed by successful bidder)

Printed Name of Signatory

Company Name: _____

Address: _____

Phone: _____

Email: _____

6.23. GIS DATA DISCLAIMER

THE CITY OF TEMPE DOES NOT WARRANT THE ACCURACY, COMPLETENESS, CONDITION, SUITABILITY, PERFORMANCE, OR CURRENCY OF THE GIS DATA PROVIDED UNDER THIS CONTRACT. AREAS DEPICTED BY GIS DATA ARE APPROXIMATE, AND NOT GUARANTEED TO BE ACCURATE TO STANDARDS FOR MAPPING, SURVEYING, OR ENGINEERING. THIS DATA IS FOR ILLUSTRATIVE PURPOSES ONLY AND SHOULD NOT BE RELIED UPON FOR SITE-

SPECIFIC PURPOSES. THE DATA HEREIN IS SUBJECT TO CONSTANT CHANGE AND MAY NOT BE COMPLETE, ACCURATE, OR UP-TO-DATE. THE CITY OF TEMPE IN NO WAY ASSUMES LIABILITY OR RESPONSIBILITY FOR ANY INCORRECT DATA OR ANY INFORMATION PROVIDED HEREIN. CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE CITY OF TEMPE ASSUMES NO LIABILITY FOR DAMAGES INCURRED DIRECTLY OR INDIRECTLY RESULTING FROM INCOMPLETE, INCORRECT, OR MISSING INFORMATION; INCLUDING ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE. **BY WAY OF THE SIGNATURE ON THIS CONTRACT, CONTRACTOR ASSUMES ALL LIABILITY FOR ANY AND ALL DEPENDENCE AND/OR RELIANCE UPON THIS INFORMATION AND ASSUMES ALL RESPONSIBILITY RELATING THERETO. ANY AND ALL EXPRESSED OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PURPOSE ARE SPECIFICALLY AND EXPRESSLY DISCLAIMED.** CONTRACTOR SHOULD NOT RELY UPON THE GIS DATA WITHOUT PROPER FIELD VERIFICATION FOR ANY PURPOSE.

6.24. AMENDMENT OF CONTRACT

No supplement, modification or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract except as expressly provided herein to the contrary.

The Contract may not be changed, altered, or amended in any way except in writing signed by duly authorized representatives of CMAR and City. Contractor shall maintain a Certification by the Contractor Authorizing Employees to Sign Binding Agreements on file with the City. That Certification shall identify all individuals authorized by Contractor to execute documents necessary to carry out the terms of this Contract or to amend this Contract.

If the Contractor already has a Certification on file with the City, that Certification, along with any future amendments, is incorporated herein by reference. If the contractor does not already have a Certification on file with the City, it shall submit one with the City upon receipt of a Notice to Proceed, and that Certification, along with any future amendments, shall be incorporated herein by reference. In either case, Contractor agrees that the individuals listed on its most recent Certification by the Contractor Authorizing Employees to Sign Binding Agreements shall have authority to execute documents necessary to carry out the terms of the Contract or to amend this Contract.

6.25. LABOR

Contractor agrees and covenants to use only licensed contractors and subcontractor(s) in the making and/or installation of any and all repairs, alterations, improvements, or other work of Contractor on the Project. Contractor shall be liable

to City for any losses and liabilities associated with any violation of this provision, and the Contract shall immediately be terminated upon any violation by Contractor.

6.26. NON-APPROPRIATION OF FUNDS OR NON-FUNDING

City is a government agency that relies upon appropriation of funds by its governing body to satisfy its obligations. In the event that (1) funds are not appropriated by the City Council to perform the Work; or (2) funds appropriated or otherwise allocated to perform the Work become unavailable for payment by City under this Contract, City may either (a) cancel this Contract without further obligation of City; or (b) delay the Work for a period of six (6) months. In case of any such delay by City, Consultant/Contractor may suspend performance of work or services as applicable. The parties retain all rights available under this Contract to the extent permitted under Arizona law, in the event of termination or cancellation of this Contract due to lack of funding on the part of the City.

6.27. PUBLIC RECORDS

The City is a public entity subject to the provisions of the Arizona Public Records Law, A.R.S. § 39-121, *et seq.* (“Law”). Some or all of the information contained within the Contract and related documents constitutes a public record that the City may be required to disclose to other persons or entities. In the event of receipt of a public records request by the City, Contractor must provide verification that its document falls under the exception to the Law in order to contest disclosure of said document. In the event of Contractor contesting disclosure, said document shall be submitted to a court of competent jurisdiction for an *in camera* review and determination, at Contractor’s sole expense.

6.28. COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument, and it shall not be necessary that any single counterpart bear the signature of all parties.

6.29. RECORD RETENTION

Contractor agrees to retain all records relating to the Contract pursuant to A.R.S. § 35-214, as amended from time to time. Contractor agrees to make those records available at all reasonable times for inspection and audit by City during the term of the Contract and for a period of five (5) years after the completion of the Contract. The records shall be provided at City Public Works Department, Engineering Division, Tempe, Arizona, or another location designated by City upon reasonable notice to Contractor.

6.30. DRUG-FREE WORKPLACE

Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and as a requirement for sellers/Contractors doing business with the City to ensure the safety and health of employees working on City license agreements, contracts, and/or projects. Contractor agrees to require a drug-free

workplace for all employees working under this Contract. Specifically, all employees of Contractor who are performing work under this Contract shall be notified, in writing, by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the work place or work site. Any violation of this section constitutes a material breach of this Contract.

7. FEDERAL FHWA AND ADOT PROVISIONS/FORMS

CITY PROJECT NAME: Bike Lanes/ Pedestrian Improvements – Scottsdale Road from Curry Road to Continental Drive

CITY PROJECT NO: 6009741

FEDERAL PROJECT NO: TMP-0(254)D

ADOT NO: 0000 MA TMP T0260 01C

The following documents should be part of and are required to be incorporated into all subcontracts, purchase orders, rental agreements and equipment leases at every tier issued under this contract:

- 7.1. Federal Non-Collusion Certification (SUBMIT WITH BID)
- 7.2. Buy America / Build America, Buy America (BABA) Act
- 7.3. Disadvantaged Business Enterprise/DBE Goal
 - 7.3a DBE BECO form 3102C – DBE Goal Assurance
 - 7.3b DBE BECO form 3105C – DBE Intended Participation Affidavit & Confirmation
 - 7.3c DBE BECO form 3106C – DBE Intended Participation Affidavit Summary
 - 7.3d DBE BECO form 3108C – DBE Termination Substitution Request
 - 7.3e DBE BECO form 3109C – Joint Check Agreement Request
 - 7.3f DBE BECO form 3114C – Joint Check Agreement
 - 7.3g DBE BECO form 3110C – DBE Certification of Final Payment
 - 7.3h DBE BECO form – DBE Subcontract Compliance Assurances
- 7.4. Prompt Pay and Payment Reporting Provisions
- 7.5. Title VI
 - 7.5.1. Title VI Assurance
 - 7.5.2. Title VI Appendix A
 - 7.5.3. Title VI Appendix B
 - 7.5.4. Title VI Appendix C
 - 7.5.5. Title VI Appendix D
 - 7.5.6. Title VI Appendix E
- 7.6. EEO (Equal Opportunity Employment)
 - 7.6.1. EEO Clause/Statement (Submit this form with bid)
 - 7.6.2. EEO Executive Order 11246 – Standard Federal EEO Construction Contract Specifications
 - 7.6.3. EEO Notice of Requirement for Affirmative Action to Ensure EEO
 - 7.6.4. EEO Equal Employment Opportunity Compliance Reports
 - 7.6.5. EEO Executive Order 2009-09
- 7.7. FHWA 1273
- 7.8. Cargo Preference Act
- 7.9. Standardized Changed Condition Clause
- 7.10. Changes and Extra Work/Contract Time and Contract Time Extensions
- 7.11. Access and Records Retention/Contractor Subcontractor Records
- 7.12. Federal Immigration and Nationality Act
- 7.13. On the Job Training
- 7.14. Energy Conservation
- 7.15. Davis Bacon Wage Decision
- 7.16. Jobsite Poster Requirements
- 7.17. Environmental Commitment

7.1. FEDERAL NON-COLLUSION BIDDING CERTIFICATION (Submit with Bid)

Bidder		Project Name:	BIKE LANES/PEDESTRIAN IMPROVEMENTS – SCOTTSDALE ROAD FROM CURRY ROAD TO CONTINENTAL DRIVE, PROJECT NO. 6009741, FEDERAL AID PROJECT NO. TMP-0(254)D, ADOT TRACS NO. 0000 MA TMP T0260 01C
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Instructions to Bidder: Failure to complete this sworn statement and to submit it with your bid will make your bid nonresponsive and your firm ineligible for award consideration.

State of _____)

_____)

County of _____)

 (Printed Name of Person Authorized to Represent Bidder)

being first duly sworn, upon oath deposes and says that:

I am _____,
 (Title)

of _____,
 (Name of Bidder Firm, Association, or Corporation)

and that pursuant to 23 U.S.C. § 112(c) and 23 C.F.R. § 635.112(f), neither I, nor anyone associated with the above-named firm, association, or corporation, has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the above-referenced Project.

 (Signature)

Subscribed and sworn before me this _____ day of _____, 2025, by _____
 (day) (month) (year) (Name of Signer, Above)

If by a Corporation, SEAL:

 (Signature of Notary Public)

My Commission Expires: _____
 (Date)

7.2 **BUY AMERICA / BUILD AMERICA, BUY AMERICA (BABA) ACT**

*** USE ON ALL FEDERAL AID PROJECTS (106CMATLS) – UPDATE (10/01/2024) ***

This project is subject to FHWA’s “Buy America” regulations in 23 CFR § 635.410 and “Build America, Buy America (BABA)” regulations in Division G, Title IX, Subtitle A, Part 1 of the Infrastructure Investment and Jobs Act (IIJA).

SOURCE OF MATERIALS AND QUALITY:

When used on a federal-aid construction project all iron, steel, manufactured products, and construction materials permanently incorporated into the project must be produced domestically and comply with the provisions of Buy America and Build America, Buy America.

These provisions shall apply to all product categories specified below:

- (1) Iron and Steel Products (Ferrous Metals)
 - a. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- (2) Manufactured Products
 - a. Manufactured products must be one hundred percent manufactured in the United States. Fifty-five percent of components, by cost, of the manufactured product must be made in the United States.
- (3) Construction Materials
 - a. Non-ferrous metals. (ex. copper)
 - i. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
 - b. Plastic and polymer-based products (ex. polyvinyl chloride, composite chloride, composite building materials, and polymers used in fiber optics cables)
 - i. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
 - c. Glass.
 - i. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
 - d. Fiber optic cable (including drop cable).
 - i. All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States.
All manufacturing processes also include the standards for glass and optical fiber, but not for nonferrous metals, plastic and polymer-based products, or any others.
 - e. Optical fiber.
 - i. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.

- f. Lumber.
 - i. All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.
- g. Drywall.
 - i. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- h. Engineered wood.
 - i. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

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

Construction Materials shall not include cement, cementitious materials, bituminous materials, aggregates such as stone, sand, or gravel (ex. asphalt, bricks, block), aggregate binding agents, and additives.

Contractor shall provide the necessary documentation for all products and materials required by Buy America, BABA. Payment(s) may be reduced, or withheld, for failing to submit the necessary reports, documents, and certifications of compliance.

By submitting an application for payment, based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials are compliant with Buy America, BABA requirements. Contractor shall certify upon completion that all work and materials have complied with Buy America, BABA requirements.

Installation of materials or products that are not compliant with the Federal requirements shall be considered defective work. The Contractor shall remove and replace all defective work, at no cost to the Agency. Contractor should ensure that Agency has an approved manufacturer's certification, or waiver, prior to items being procured or delivered to the project site.

CERTIFICATE OF COMPLIANCE:

Contractor shall include manufacturer's certifications for Buy America and Build America, Buy America Act requirements with all applicable submittals. Contractor shall furnish the Agency with Certificates of Compliance, conforming to the requirements specified herein, ADOT Materials Testing Manual, and applicable ADOT Materials Policy and Procedures Directives, which shall state that the construction materials incorporated in the project meet the specified requirements.

Certificates of Compliance shall certify that all manufacturing processes to produce construction materials occurred in the United States. Contractor shall coordinate with manufacturers, distributors,

and suppliers to correct deficiencies in any BABA documentation. Shop drawing, and sample, submittals shall include review of BABA certification documentation.

Certificate of Compliance:

Contractor shall submit a Certificate of Compliance, on the manufacturer's, or supplier's, official letterhead, and shall contain the following information:

- (1) Federal, State, and Local Agency project numbers.
- (2) Project title and location.
- (3) The current name, address, and phone number of the manufacturer or supplier of the material.
- (4) Location(s) of manufacturing plants involved in producing certified material.
- (5) A description of the material supplied.
- (6) Quantity of material represented by the certificate.
- (7) Means of material identification, such as label, lot number, or marking.
- (8) A statement that the material complies in all respects with the sourcing requirements of the Buy America / Build America, Buy America (BABA) Act included in the Infrastructure Investment & Jobs Act (IIJA). Certificates shall state compliance with the cited specifications herein. Certificates may cite multiple, if applicable.
- (9) A statement that the individual identified in item ten, below, has the legal authority to bind the manufacturer or the supplier of the material.
- (10) The name, title, and signature of the responsible individual. The date of the signature shall also be given.

Items three (3) through nine (9) specified above shall be completed prior to the signing of the certificate as defined in item ten. No certificate will be accepted that has been altered, added to, or changed in any way after the authorized signature has been affixed to the original certificate. However, notations of a clarifying nature, such as project number(s), project title, contractor, or quantity shipped are acceptable, provided the basic requirements of the certificate are not affected.

A copy or facsimile reproduction of the original certificate will be acceptable; however, the original certificate shall be made available upon request.

Certificate of Analysis:

A Certificate of Analysis shall include all the information required for a Certificate of Compliance and, in addition, shall include the results of all tests required by the specifications.

7.3. CONSTRUCTION CONTRACTS DBE PROVISIONS

FOR USE ON LPA FEDERAL AID PROJECTS WITH GOALS

DISADVANTAGED BUSINESS ENTERPRISES (LPA EPRISE, 07/01/2017)

7.3.1. Policy:

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

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

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

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

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

7.3.2. Assurances of Non-Discrimination:

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

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

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

7.3.3. Definitions:

- (A) **Commercially Useful Function (CUF):** Commercially Useful Function is defined fully in 49 CFR 26.55 which definition is incorporated herein by reference.
- (B) **Committed DBE:** A DBE that was identified by the contractor, typically on a DBE Affidavit, to meet an assigned DBE goal as a condition of contract award and performance, and includes any substitute DBE that has subsequently been committed work to meet the assigned contract goal.
- (C) **Disadvantaged Business Enterprise (DBE):** a for-profit small business concern which meets both of the following requirements:
 - (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,
 - (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (D) **Joint Check:** a two-party check between a subcontractor, DBE and/or non-DBE, a prime contractor and the regular dealer of material supplies.
- (E) **Joint Venture:** an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- (F) **NAICS Code:** The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the US business economy.
- (G) **Non-DBE:** any firm that is not a DBE.
- (H) **Race Conscious:** a measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.
- (I) **Race Neutral:** a measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race neutral includes gender-neutrality.

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

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

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

- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;

- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

7.3.4. Working with DBE's:

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

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

7.3.4.1. Mentor-Protégé Program:

ADOT has established a Mentor-Protégé program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program encourages prime contractors to provide certain types of assistance to certified DBE subcontractors. ADOT encourages contractors and certified DBE subcontractors to engage in a Mentor-Protégé agreement under certain conditions. Such an agreement must be mutually beneficial to both parties and to ADOT in fulfilling the requirements of 49 CFR Part 23. For guidance regarding this program, refer to the Mentor-Protégé Program Guidelines available on the BECO website.

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

7.3.5. Applicability:

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

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

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

7.3.6. Certification and Registration:

7.3.6.1. DBE Certification:

Certification as a DBE shall be predicated on:

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

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

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

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

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

7.3.6.2. SBC Registration:

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

While the SBC component of the DBE program does not require utilization goals on projects, the Department and the LPA/Subrecipient encourages contractors to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification

requirement. The contractor may use the AZ UTRACS website to search for certified DBEs and registered SBCs that can be used on the contract. However, SBCs that are not DBEs will not be counted toward the DBE contract goal.

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

7.3.7. DBE Financial Institutions:

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

ADOT and the LPA/Subrecipient encourages prime contractors to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

7.3.8. Time is of the Essence:

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

7.3.9. Computation of Time:

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

7.3.10. Contractor and Subcontractor Requirements:

7.3.10.1. General:

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

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

7.3.10.2. DBE Liaison:

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

7.3.11. Bidders/Proposers List and AZ UTRACS Registration Requirement:

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

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

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

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

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

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

7.3.12. DBE Goals:

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

17.43 Percent

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

7.3.13. Submission with Bids:

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

- (1) The bidder has met the established DBE goal and arrangements with certified DBEs have been made prior to the submission of the bid, or

- (2) The bidder has been unable to meet the established DBE goal prior to the submission of the bid and has made good faith efforts to do so.

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

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

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

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

7.3.14. Bidder Meeting DBE Goal:

7.3.14.1. General:

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

If the bid of the apparent low bidder is rejected for any reason, the next low bidder may become the apparent low bidder only if it had submitted the information described in this Subsection or Subsection 7.3.15.1, as appropriate, no later than five calendar days after bid opening.

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

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

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

be listed to two decimal places. The DBE Intended Participation Affidavit Summary must be submitted listing all the DBEs intended to be used and the creditable amounts.

- (3) A separate DBE Intended Participation Affidavit must be submitted for each DBE used to meet the goal of the project. The bidder shall indicate each DBE's name, a description of the work the DBE will perform, bid item number, proposed subcontract amount, and the NAICS code applicable to the kind of work the firm would perform on the contract. A list of certified DBEs with their respective NAICS codes can be located on the DBE Directory at AZ UTRACS website. All partial items must be explained. If not, the DBE will be considered to be responsible for the entire item. The intended DBE must complete and sign the form to confirm its participation in the contract.
- (4) The affidavits and summary may be submitted electronically through email to the LPA/Subrecipient Procurement Office.
- (5) A bidder must determine DBE credit in accordance with DBE Subsection 7.3.18 (Crediting DBE Participation Toward Meeting Goals). The affidavit will be reviewed, and approved or rejected by the LPA/Subrecipient Procurement Office, with BECO concurrence.
- (6) Only those DBE firms certified by the Arizona Unified Certification Program (AZUCP) as of the deadline for bid submittal will be considered for DBE credit. It shall be the bidder's responsibility to ascertain the certification status of designated DBEs.
- (7) All DBE commitment amounts must be finalized between the DBE subcontractor and the bidder prior to the deadline for affidavit submittal. Bidders shall not inflate DBE awards in order to meet contract goals.
- (8) The bidder bears the risk of late submission or late delivery by the postal service or a delivery service. Affidavits and Summary received by the LPA/Subrecipient Procurement Office after 4:00 P.M. on the fifth calendar day following the bid opening will not be accepted.
- (9) Reduction of DBE commitments after affidavit submittal and prior to execution of the contract without good cause will result in the bid being rejected or LPA/Subrecipient rescinding any award. Scheduling conflicts are not necessarily evidence of good cause as this should have been considered during pre-bid negotiations. The contractor is responsible for ensuring the DBE is available to meet the requirements of the contract.

7.3.14.2. Failure to Comply:

If the apparent low bidder fails to submit the required information by the stated time and in the manner herein specified, or if the submitted information reveals a failure to meet the requirements of the

specifications, the apparent low bidder shall be ineligible to receive award of the contract and the bid will be rejected.

7.3.15. Documented Good Faith Effort:

7.3.15.1. General:

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

If the bid of the apparent low bidder is rejected for any reason, the next low bidder may become the apparent low bidder only if it had submitted the information described in this Subsection or Subsection 7.3.14.1, as appropriate, no later than five calendar days after bid opening.

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

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

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

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

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

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

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

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

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

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

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

A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. However, prime contractors are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Documentation, such as copies of all other bids or quotes, must be submitted.

- (6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- (7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (8) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (9) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. The contractor must submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract. A generalized assertion that the contractor has received multiple quotes is not sufficient unless copies of those quotes are provided. The Department may contact rejected DBEs as part of its investigation. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals. In determining whether a bidder has made good faith efforts, the LPA/Subrecipient will review the documented efforts of the contractor and will review the performance of other bidders in meeting the contract goal.

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

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

7.3.15.2. Failure to Comply:

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

7.3.15.3. Appeal and Protest of Good Faith Effort Determination:

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

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

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

7.3.16. Rejection of Low Bid:

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

A bidder may become the apparent low bidder only if it had submitted the information described in Subsection 7.3.14.1 or 7.3.15.1, as appropriate, no later than five calendar days after bid opening.

7.3.17. Payment Reporting:

The contractor shall report on a monthly basis indicating the amounts paid to all subcontractors, of all tiers, working on the project. Reporting shall be in accordance with Prompt Pay and Payment Reporting requirements in 7.4 of the contract Federal Provisions.

7.3.18. Crediting DBE Participation Toward Meeting Goals:

7.3.18.1. General Requirements:

To count toward meeting a goal, the DBE firm must be certified as of the deadline for submission of bids in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for

each DBE can be found on the AZ UTRACS under the Firm Directory. General descriptions of all NAICS codes can be found at www.naics.com.

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

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

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

If a DBE cannot complete its work due to failure to obtain or maintain its licensing, the contractor bears the responsibility to notify the LPA/Subrecipient immediately after the contractor becomes aware of the situation, and request approval to replace the DBE with another DBE. The contractor shall follow the DBE termination/substitution requirements described in Subsection 7.3.24 of these DBE provisions.

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

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

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

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

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

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

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will

not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

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

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

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

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

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

A prime contractor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

7.3.18.2. DBE Prime Contractor:

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

7.3.18.3. Effect of Loss of DBE Eligibility:

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

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

7.3.18.4. Notifying the Contractor of DBE Certification Status:

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

7.3.18.5. Police Officers:

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

7.3.18.6. Commercially Useful Function:

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

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

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

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the LPA/Subrecipient will presume that the DBE is not performing a commercially useful function.

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

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

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

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

7.3.18.7. Trucking:

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

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

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

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

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

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

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

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

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

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

7.3.18.8. Materials and Supplies:

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

If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies is credited. A DBE regular dealer is defined as a firm that owns, operates, or maintains a store or warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, stone or asphalt without owning, operating, or maintaining a place of business, as provided above, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement, and not on an ad-hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

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

similar services. The cost of the materials and supplies themselves may not be counted toward the DBE goal.

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

7.3.19. Effect of Contract Changes:

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

LPA/Subrecipient will approve or deny the contractor's good faith efforts with BECO concurrence. The contractor is not required to take work committed to another subcontractor and assign it to a DBE subcontractor in order to meet the committed DBE percentage.

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

7.3.20. DBE Participation Above the Goal (Race Neutral Participation):

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

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

7.3.21. Required Provisions for DBE Subcontracts:

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

Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through

subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the LPA/Subrecipient and ADOT deem appropriate as outlined in DBE Subsection 7.3.1.

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

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

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

7.3.22. Contract Performance:

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

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

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

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

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

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

7.3.23. Joint Checks:

7.3.23.1. Requirements:

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

1. The DBE subcontractor must be independent from the prime contractor and the supplier and must perform a commercially useful function. The DBE subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE subcontractor may not be utilized as an extra participant in a transaction, contract, or project in order to obtain the appearance of DBE participation.
2. The use of joint checks will be allowed only if the prime contractor, DBE subcontractor, and material supplier establish that the use of joint checks in similar transactions is a commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBE's do not participate.
3. A material or supply contract may not bear an excessive ratio relative to the DBE subcontractor's normal capacity.
4. There may not be any exclusive arrangement between one prime and one DBE in the use of joint checks that may bring into question whether the DBE is independent of the prime contractor.
5. Any arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the supplier.
6. The prime contractor may act solely as the payer of the joint check and may not have responsibility for establishing the terms of the agreement between the DBE subcontractor and the supplier.
7. The DBE must be responsible for receiving the check from the prime contractor and delivering the check to the supplier.
8. The prime contractor cannot require the DBE subcontractor to use a specific supplier, and the prime contractor may not participate in the negotiation of unit prices between the DBE subcontractor and the supplier.

7.3.23.2. Procedure and Compliance:

1. BECO must approve the agreement for the use of joint checks in writing before any joint checks are issued. The prime contractor shall submit a DBE joint check request form (ADOT BECO Form 3109C), available from the BECO website, along with the joint check agreement (ADOT BECO Form 3114C), to LPA/Subrecipient and BECO through email within seven calendar days from the time the subcontract is executed.

2. After obtaining authorization from BECO for the use of joint checks, the prime contractor, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the agreement by the LPA/Subrecipient.
3. Copies of canceled checks must be submitted, with the payment information for the period in which the joint check was issued, electronically through email to LPA/Subrecipient Procurement Office and made available for review at the time of the onsite CUF review. The prime contractor, DBE, and supplier each have an independent duty to report to the LPA/Subrecipient in the case of any change from the approved joint check arrangement.
4. Any failure to comply will be considered by the LPA/Subrecipient, with ADOT concurrence to be a material breach of this contract and will subject the prime contractor, DBE, and supplier to contract remedies and, in the case of serious violations, a potential for termination of the contract, or other remedies which may prevent future participation by the offending party.

7.3.24. DBE Termination/Substitution:

7.3.24.1. General Requirements:

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

7.3.24.2. Contractor Notice of Termination/Substitution:

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

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

7.3.24.3. Contractor Request for Termination/Substitution:

The contractor shall formally request the termination or substitution of a DBE listed on the DBE Intended Participation Affidavit Summary by submitting the DBE Termination/Substitution Request (ADOT BECO Form 3108C) with supporting documentation to the LPA/Subrecipient; form is available from the LPA/Subrecipient. The submission shall include the following information:

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

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

7.3.24.4. Good Cause:

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

1. Fails or refuses to execute a written contract.
2. Fails or refuses to perform the work of its subcontract in a way consistent with normal industry practice standards. However, good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
3. Fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond/insurance requirements.

4. Becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. Is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal or state law.
6. Is not a responsible contractor.
7. Voluntarily withdraws from the project and provides written notice of its withdrawal to the Department.
8. Is ineligible to receive DBE credit for the type of work required.
9. A DBE owner dies or becomes disabled with the result that the firm is unable to complete its work on the contract.
10. Other documented good cause that the BECO determines compels the termination or substitution of the DBE subcontractor.

7.3.24.5. DBE Termination/Substitution Good Faith Effort:

If the LPA/Subrecipient approves the termination of a DBE, the contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The good faith efforts as identified in DBE Subsection 7.3.15 shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. If a replacement DBE is not identified for the original DBE's work, the good faith efforts shall be documented and provided, upon request, to the LPA/Subrecipient within seven calendar days from the date of the request.

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

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

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

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

7.3.24.6. Sanctions:

Failure by the contractor to carry out the requirements of these DBE Termination/Substitution specifications is a material breach of contract and will result in such remedies as the LPA/Subrecipient deems appropriate, with ADOT concurrence, which will include, but are not limited to the assessment of liquidated damages. The LPA/Subrecipient will deduct from monies due or becoming due to the contractor, the dollar amount of the wrongfully substituted/replaced DBE subcontract plus 25 percent of the amount remaining to be paid to the DBE as liquidated damages. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

7.3.25. Certification of Final DBE Payments:

The contractor's achievement of the goal is measured by actual payments made to the DBE. The contractor shall submit the "Certification of Final DBE Payments" (ADOT BECO Form 3110C) for each DBE firm working on the contract. This form shall be signed by the contractor and the relevant DBE, and submitted to the LPA/Subrecipient no later than 30 days after the DBE completes its work.

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

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

7.3.26. Sanctions for Not Meeting Contract DBE Goal:

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

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

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

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

7.3.27. False, Fraudulent, or Dishonest Conduct:

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

BY 4:00 PM ON THE FIFTH CALENDAR DAY FOLLOWING BID OPENING, submit to:
Public Works Department/Engineering Division, City Hall, 31 East 5th Street, Garden Level, Tempe, AZ, 85281. Attn: Eduardo Gutierrez, electronically to: eduardo.gutierrez@tempe.gov

1. **On-Line Bidders List - All bidders must complete an on-line bidders list** at AZ UTRACS web portal; <https://utracs.azdot.gov/> and, submit the corresponding Bidders List email confirmation notice to the agency by 4:00 pm on the 5th calendar day after bids are opened.
2. ADOT BECO form 3102C – DBE Goal Assurance (Submit with bid)
3. ADOT BECO form 3105C DBE Intended Participation Affidavit: Individual (Recommended from ALL Bidders)
4. ADOT BECO form 3106C DBE Intended Participation Affidavit Summary for Prime (Recommended from all Bidders)
5. DBE form(s) that will be included in the executed Contract (not due with bid submittal):
 - DBE BECO form 3108C – DBE Termination Substitution Request (7.3d)
 - DBE BECO form 3109C – Joint Check Agreement Request (7.3e)
 - DBE BECO form 3110C – DBE Certification of Final Payment (7.3g)
 - DBE BECO form 3114C – Joint Check Agreement (7.3f)

The above forms can be found at <https://azdot.gov/business/business-engagement-and-compliance/lpasubrecipient/contract-forms-specs> Choose the Construction Contract (with DBE Goal)

NOTE: THE BIDDER IS SOLELY RESPONSIBLE FOR SUBMITTING WITH ITS BID ALL ITEMS REQUIRED BY THIS INVITATION FOR BID DOCUMENT. THIS CHECK SHEET IS PROVIDED SOLELY TO AID THE BIDDER IN PREPARING ITS BID SUBMITTAL AND SHALL NOT BE CONSTRUED AS IMPOSING RESPONSIBILITY ON THE PART OF THE CITY OF TEMPE.

SECTION 7.3. - FORMS

- | | |
|------|---------------------------------------------------------------------------|
| 7.3a | DBE BECO form 3102C – DBE Goal Assurance |
| 7.3b | DBE BECO form 3105C – DBE Intended Participation Affidavit & Confirmation |
| 7.3c | DBE BECO form 3106C – DBE Intended Participation Affidavit Summary |
| 7.3d | DBE BECO form 3108C – DBE Termination Substitution Request |
| 7.3e | DBE BECO form 3109C – Joint Check Agreement Request |
| 7.3f | DBE BECO form 3114C – Joint Check Agreement |
| 7.3g | DBE BECO form 3110C – DBE Certification of Final Payment |
| 7.3h | DBE BECO form – DBE Subcontract Compliance Assurances |

CITY OF TEMPE 7.3a
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
GOAL ASSURANCE

The undersigned, fully cognizant of the requirements and of the goal established, hereby certifies that in the preparation of this bid for federal aid project:

ADOT TRACS No: _____

Agency Project No: _____

Project Name: _____

(CHECK ONE)

The bidder has met the established DBE goal and arrangements with certified DBEs have been made prior to the submission of the bid.

OR

The bidder has been unable to meet the established DBE goal prior to the submission of the bid and has made good faith efforts to do so.

THIS CERTIFICATE MAY NOT BE REVISED OR CORRECTED AFTER SUBMISSION OF THE BID.

If the bidder certifies that it has met the goal, the bidder cannot change its decision after submission of the bid and submit documentation of a good faith effort. If the bidder certifies that it has been unable to meet the goal and has made a good faith effort, the bidder cannot change its position after the submission of the bid and claim to have met or be able to meet the established goal.

In accordance with the DBE Special Provisions, the bidder shall specify its DBE participation on the "DBE Intended Participation Affidavit", or provide documentation of its good faith efforts, by 4:00 p.m. on the fifth calendar day following the bid opening. The bidder shall obtain the required affidavit from the _____

Insert Agency Name

Print Name of Firm

Print Name of Authorized Officer of Firm

Signature of Authorized Officer of Firm

Title

Date

**CONSTRUCTION
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit**

Refer to Instructions on
Page 2

Prime Contractor: _____ Project Name: _____

TRACS No(s): _____ Project/Contract No.: _____

DBE Firm: _____ AZ UTRACS Registration No.: _____

Select: Subcontractor Trucker Broker (Fees/Commission) Supplier (60% DBE Credit) Manufacturer

1. The undersigned is prepared to perform the following scope(s) of work on the above referenced project.

UNIT PRICE OR LUMP SUM BID						
NAICS Code(s)	Bid Item No.	Partial Yes/No	Description / Scope of Work	Quantity	Unit Price	Total
						\$ 0.00
						\$ 0.00
						\$ 0.00
						\$ 0.00
2. (Trucking) If there is any Trucking in the work listed above, complete the following: Minimum Contract Amount:						\$0.00

DBE firm owns total # <u>0</u> Trucks	<u>Project Use</u>	<u># of Trucks</u>	<u>Dollar Amount</u>
	DBE owned trucks	<u>0</u>	<u>\$ 0.00</u>
	DBE leased trucks	<u>0</u>	<u>\$ 0.00</u>
	non-DBE leased w/DBE driver	<u>0</u>	<u>\$ 0.00</u>
	non-DBE leased w/o DBE driver	<u>0</u>	<u>\$ 0.00</u>

3. (Brokerage) The undersigned affirms that the amount of fees and commissions for work quoted above are as follows:

Total Min Contract Amount \$ 0.00 Fees/Commissions \$ 0.00 & 0%

4. The undersigned will **sublet** and/or award \$ 0.00 of work bid to a **non-DBE firm**.

5. The undersigned will **sublet** and/or award \$ 0.00 of work to another **certified DBE firm**.

Confirmation of Participation

By signature below, the undersigned agrees to enter into a formal agreement/subcontract for the work cited herein should the prime contractor receive award of this contract from the Purchaser.

I, _____ confirm that _____
(Authorized DBE firm officer, print name and title) (Name of DBE firm)

will be participating in the above project.

The DBE firm will be performing the scope as describe above for: _____
\$ 0.00
(Total DBE Credit Dollar Value)

(Authorized DBE firm officer, Signature) (Date)

CITY OF TEMPE 7.3b
CONSTRUCTION
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit

INSTRUCTIONS

1. Do not submit *Instructions* page.
2. Contractors are encouraged to fill out the form based on information from prior arrangements made with the DBE Contractor, Subcontractor, Lower Tier Subcontractor, Supplier or Broker
3. The form must be signed by an authorized officer or principal of the DBE firm and submitted to the contractor.
4. The form must be submitted **by 4:00 p.m.** on or before the **fifth calendar day** after the bids are opened.
5. The DBE firm must be certified and licensed within the work category to be performed.
6. The form must be filled out **entirely**. Leave no blank spaces, use N/A or enter "0" if section does not apply.
7. NAICS Code: Enter up to three NAICS codes applicable to the description/scope of work (attach copy of quote(s) as necessary).
8. For additional description/scope of work fill out additional form(s) as necessary (attach copy of quote(s) as necessary).
9. A separate form must be submitted for each proposed DBE firm.
10. All partial items must be noted. If not, the DBE will be considered to be responsible for the entire item.
11. Completed form(s) must be scanned and emailed to eduardo_gutierrez@tempe.gov

Definitions:

1. Unit Price or Hourly Rate Bid or Lump Sum Bid
 - *NAICS Code*: Identify the North American Industry Classification System code that the firm is certified as a DBE to perform (Refer to AZUTRACS at <https://utracs.azdot.gov/> & NAICS at <https://www.naics.com/>)
 - *Bid Item No.*: Identify the work item number that correlates to the work being performed
 - *Description / Scope of Work*: Identify work to be performed
 - *Total*: Identify the total dollar value for the work to be performed - ***Note*** - *The Total for any Bid Item on Affidavits cannot exceed the Prime Contractors Bid Tab Total for the same Bid Item*
2. Trucking
 - Identify total number of trucks owned by DBE and the total dollar value of work
 - Identify total number of DBE trucks used on this project and the total dollar value of work
 - Identify total number of DBE leased trucks used on this project and the total dollar value of work
 - Identify total number of non-DBE leased trucks with DBE drivers used on this project and the total dollar value of work
 - Identify total number of non-DBE leased trucks without DBE drivers used on this project and the total dollar value of work
3. Brokerage
 - Identify total dollar value of brokered work
 - Identify the fees or commission value that pertain to the total brokerage amount
4. Identify the total dollar amount to be subcontracted to a non-DBE firm
5. Identify the total dollar amount to be subcontracted to a DBE firm



CITY OF TEMPE 7.3c
CONSTRUCTION
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit – Summary

INSTRUCTIONS

1. Do not submit *Instruction* page.
2. Identify first-tier DBE firms and any lower-tier DBE firms if used by non-DBE subcontractors for total DBE utilization.
3. When completing the calculations table, enter the Contract Bid Amount (F) first so pop-up warning message does not appear.
4. Submit corresponding *DBE Intended Participation Affidavit* form for each DBE firm identified on this form.
5. Completed documentation can be scanned and emailed to eduardo@gutierrez@tempe.gov

Definitions:

AZ UTRACS Registration No.: can be found conducting a search on the AZ UTRACS website: <https://utracs.azdot.gov/Search>.

DBE Liaison Name: the designated employee who shall be responsible for the administration of the prime's DBE program *Contract Bid*

Amount: Total dollar amount bidder proposes at time of bid (Total Bid Amount)

Prime Name: name of contractor

TRACS No.: number identifier for contracts, projects, solicitations, and purchase orders

A – DBE firm's name

B – Services provided by the DBE firm – must coincide with the NAICS Code the DBE is certified in

C – This amount should be the same as the "Minimum Contract Amount" on form 105C for each DBE firm listed

D – Adjustments

- Any deductions from DBE's total contract amount due to subletting of work to non-DBE firms
- DBE credit less than 100%
 - Suppliers receive 60% credit
 - Brokers receive credit for broker fees only (not full contract or P.O. value)
- Enter "0" if there are no adjustments

E – Total contract amount less any adjustments (C minus D)

F – Enter total bid amount on project



DISADVANTAGED BUSINESS ENTERPRISE (DBE)
TERMINATION/SUBSTITUTION/REDUCTION (TSR) REQUEST

Contract/TRACS No.: Federal #: Task Order:

Prime: DBE Firm:

Requestor: Email: Phone Number:

Type of request: Termination Substitution Reduction

1. Is this request due to an ADOT reduction of work?

- Yes, explain the change or reduction impact on DBE participation
No, select below the fact(s) and the reason(s) for the request (see attached instructions).

- DBE: Fails or refuses to execute written contract
Fails or refuses to perform work in accordance with normal industry standards
Fails or refuses to meet prime contractor's reasonable, nondiscriminatory bond requirements
Becomes bankrupt, insolvent or exhibits credit unworthiness
Is ineligible to work because of suspension or debarment proceedings
Is not a responsible contractor
Voluntarily withdraws from the project and provides to the Department written notice of its withdrawal
Is ineligible to receive DBE credit for the type of work required
Owner dies or becomes disabled resulting in inability to complete its work on the contract
Other documented good cause (Attach documentation)

Attach a brief statement of facts describing the situation and any supporting documentation to substantiate selection above

2. Date determined the DBE is unwilling, unable or ineligible to perform:

3. Date of Written Notice to DBE: Attach notice with this request, along with the DBE response

4. a. Original DBE affidavit amount: \$ b. Amount of work completed to date: \$
c. Remaining DBE amount: \$

For DBE Substitution only, answer questions 5 thru 7:

5. Proposed DBE Name(s):

6. Proposed DBE dollar amount to be substituted: \$

7. Projected date for substitute DBE to commence work:

Good Faith Effort Documentation to be submitted with this request or within 7 calendar days from approval of this request:

- DBE Affidavits and/or
Other documentation to substantiate efforts made to replace the same amount of DBE work

All signatures must be obtained before request is submitted.

Prime Contractor Signature

Date:

Original DBE Subcontractor Signature

Date:

Agency RE/PM Signature

Date:

FOR BECO USE ONLY
Request is: Approved Not Approved
BECO Representative:
Signature:
Date:



**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
TERMINATION/SUBSTITUTION/REDUCTION (TSR) REQUEST**

INSTRUCTIONS

THE CONTRACTOR SHALL CONTACT THE DEPARTMENT WITHIN 24 HOURS FROM THE FIRST SIGN OF ANY REASON FOR POTENTIAL DBE TERMINATION/SUBSTITUTION OR REDUCTION OF WORK FOR A DBE LISTED ON THE DBE INTENDED PARTICIPATION AFFIDAVIT SUMMARY. (SEE DBE SPECIAL PROVISIONS, SECTION 24.0)

*Terms used on this form, contractor and subcontractor
are synonymous with consultant and subconsultant respectively*

Before submitting this form to the Agency at LPAContractorcompliance@azdot.gov, complete the following:

- o Submit a written notice to the DBE and a copy to the Agency
- o Allow the DBE a minimum of five days to respond to written notice
- o Attach the DBE response with this form, as applicable
- o Obtain all three signatures

Guidance on completing the Form:

Type of Request: Mark all boxes that apply

1: Reason for Request: Select Yes or No. If no, mark boxes that apply

2: Enter the date when it was determined that the DBE is unavailable

3: Enter the date when the DBE was notified in writing

4: a. Enter dollar amount from original DBE Affidavit submitted at time of bid

b. Enter dollar amount paid to date (if any) for work completed.

c. Enter difference between 4 a. and 4 b. (*This is the remaining dollar amount to meet the commitment*)

5: Enter the name(s) of the DBE Subcontractor(s) used to substitute. In certain circumstances more than one DBE may be necessary to substitute the remaining dollar amount

Examples:

- Existing DBEs on the project that are not on the affidavits at bid time (not committed)
 - o For work already performed or for work yet to be performed, DBE credit may be considered as long as the DBE is certified (NAICS) in that type of work being performed – Pending DBE Affidavit review
- Additional work added to existing DBEs identified on the affidavit at bid time (committed)
 - o If DBE has additional work that is not included on the affidavit, DBE credit may be considered as long as the DBE is certified (NAICS) in that type of work being performed – Pending DBE Affidavit review
- When adding new DBEs on the project, DBE credit may be considered as long as the DBE is certified (NAICS) in that type of work being performed – Pending DBE Affidavit review

#6: Enter the total amount proposed to be substituted. If more than one DBE is being used, combine the amount for each individual DBE and enter the total.

#7: Enter the date the substitute DBE is to start work.

Start DBE Affidavits and/or other Good Faith Effort (GFE) processes and other supporting documentation as needed

On-Call Contracts only:

BECO approval does not constitute an approval of the proposed change to the contract. The Contractor is responsible for following the terms and conditions of the contract for making and obtaining approval to any key personnel changes originally part of the contract. Approval for the replacement of DBEs must be obtained from the Agency and BECO prior to the substituted DBE beginning work.



CITY OF TEMPE 7.3e
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Joint Check Request

TRACS No(s): _____ Project/Contract No.: _____
 Prime Name: _____ AZ UTRACS Registration No.: _____
 DBE Firm: _____ AZ UTRACS Registration No.: _____
 Material Supplier: _____ AZ UTRACS Registration No.: _____
 Requestor: _____ Email: _____ Phone Number: _____

The Agency will closely monitor the use of joint checks. To receive DBE credit for performing a commercially useful function with respect to obtaining materials and supplies, a DBE must "be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself." Only when a DBE meets all of these requirements should credit be counted for the procurement of the items by the DBE. Please refer to the DBE Special Provisions Section 23 Joint Checks for qualifying conditions. If proper procedures are not followed or ADOT determines that the arrangement results in lack of independence for the DBE involved, no credit for the DBE's participation as it relates to the material cost will be counted toward the contract goal requirement.

I have read and understand the above information and have attached a copy of the Joint Check Agreement relating to this request. I hereby acknowledge that the information provided on this form is true and accurate.

Authorized DBE Representative (print name)	Signature	Date
Authorized Prime Representative (print name)	Signature	Date
Authorized Material Supplier Representative (print name)	Signature	Date

FOR AGENCY/BECO USE ONLY Request is:
 Approved Not Approved

Agency Representative: _____
 Signature: _____
 Date: _____

BECO Representative: _____
 Signature: _____
 Date: _____



JOINT CHECK AGREEMENT

ADOT TRACS NO : _____ Project/ Contract No. : _____

1. _____ is the general contractor on the project known as _____ ("Project"), and which is being constructed for _____ ("Owner").
2. Contractor has entered a Subcontract agreement dated _____ day of _____, _____ with _____ ("Subcontractor") for the performance of the following work on the project: _____.
3. _____ ("Vendor") is supplying the following materials to Subcontractor pursuant to a Purchase order or other contract dated _____ day of _____, _____ and for use in Connection with Subcontractor's work on the Project: _____.
4. Subcontractor hereby requests Contractor to issue checks jointly payable to Subcontractor and Vendor for those amounts sought in Subcontractor's Payment Application, and reflecting the value of material furnished by Vendor to Subcontractor and for use on the project.
5. Contractor's agreement to issue checks to conditioned upon the following:
 - 5.1. Subcontractor's submittal of an Application for Payment, consistent with the terms and conditions of the Subcontract, seeking payment of amounts owed by Subcontractor to Vendor and requesting the issuance of a check for such amount made jointly payable to Subcontractor or Vendor.
 - 5.2. Contractor's approval of the Subcontractor's Payment Application.
 - 5.3. Contractor's receipt of funds from the Owner to pay the referenced Application for Payment, including that portion sought to pay for the materials furnished by the Vendor.
 - 5.4. The issuance by Vendor to Subcontractor of releases waiving any right to assert claims or liens arising out of the materials for which the joint check is requested. The occurrence of each of the foregoing shall constitute a condition precedent to Contractor's obligation to issue such checks.
 - 5.5. Nothing contained herein shall relieve Subcontractor of its primary liability to Vendor for payment of amounts owed Vendor for materials furnished for use on the Project, and except as expressly stated herein, Contractor has no liability of any kind to Vendor.
6. All payments made pursuant to this Agreement shall constitute credits against the Subcontract Amount.
7. The total amount of all joint checks to be issued under this Agreement shall not exceed \$ _____ and once said amount is reached, Contractor shall be under no obligation to issue any additional joint checks hereunder.
8. This Agreement applies only to the above referenced Project.
9. Checks issued hereunder shall be furnished to Subcontractor for its endorsement and distribution to vendor

SO AGREED this _____ day of _____, 20_____.

Signatures on Notarial certificate of agreement on page 2.



JOINT CHECK AGREEMENT

ADOT TRACS NO: _____ Project/ Contract No: _____

Authorized Prime Representative

Name _____ Title _____

Signature _____ Date _____

Authorized Subcontractor Representative

Name _____ Title _____

Signature _____ Date _____

Authorized Material Supplier Representative

Name _____ Title _____

Signature _____ Date _____

State of Arizona

County of _____

Subscribed and sworn (or affirmed) before me on this _____ day of _____, 20_____.
(Day) (Month) (Year)

by _____,
(Name of Signers)

(Notary Seal)

Notary Public Signature



CERTIFICATION OF FINAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PAYMENTS

Construction Contracts

(Submit one form for each DBE involved in the contract)

The undersigned contractor on Agency Project No: _____ ADOT TRACS No: _____ hereby, certifies that full payment was made, to the firm indicated for material and/or work performed under this project's contract as follows:

DBE FIRM AZ UTRACS Vendor Registration # _____

Name of DBE Firm _____ was paid the amount of _____

This certificate is made under Federal and State Laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime contractor, all documentation supporting the contractor's position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS THAT THE STATEMENT MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Contractor Company Name: _____

Check One: Prime Contractor Subcontractor

Name: _____ Title: _____

Signature: _____

Date: _____

The undersigned subcontractor/supplier/manufacturer for the above named project hereby certified that payments were received and/or justification by contractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS THAT THE STATEMENT MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

DBE Firm Name: _____

Check One: Subcontractor/Supplier/Manufacturer Lower-tier Subcontractor/Supplier/Manufacturer

Name: _____ Title: _____

Signature: _____

Date: _____



CITY OF TEMPE 7.3h
CONSTRUCTION CONTRACTS
LPA DBE SUBCONTRACT COMPLIANCE ASSURANCES
(07/01/2016)

LPA/SUBRECIPIENT FEDERAL AID CONTRACT WITH OR WITHOUT DBE GOAL

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

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

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

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

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

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

3. Computation of Time: (LPA EPRISE 9.0)

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

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

General Requirements:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

A prime contractor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

DBE Prime Contractor:

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

Effect of Loss of DBE Eligibility:

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

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



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

Notifying the Contractor of DBE Certification Status:

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

Police Officers:

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

Commercially Useful Function:

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

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

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

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the LPA/Subrecipient will presume that the DBE is not performing a commercially useful function.

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

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

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

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

Trucking:

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



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

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

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

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

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

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

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

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

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

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

Materials and Supplies:

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

A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract, and of the general character described by the specifications.

If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies is credited. A DBE regular dealer is defined as a firm that owns, operates, or maintains a store or warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, stone or asphalt without owning, operating, or maintaining a place of business, as provided above, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement, and not on an ad-hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.



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

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

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

5. Effect of Contract Changes: (LPA EPRISE 19.0)

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

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

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

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

6. DBE Participation Above the Goal (Race Neutral Participation): (LPA EPRISE 20.0)

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

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

7. Required Provisions for DBE Subcontracts: (LPA EPRISE 21.0)

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

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

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

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



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

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

8. Contract Performance: (LPA EPRISE 22.0)

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

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

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

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

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

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

9. Joint Checks: (LPA EPRISE 23.0)

Requirements:

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

1. The DBE subcontractor must be independent from the prime contractor and the supplier, and must perform a commercially useful function. The DBE subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE subcontractor may not be utilized as an extra participant in a transaction, contract, or project in order to obtain the appearance of DBE participation.
2. The use of joint checks will be allowed only if the prime contractor, DBE subcontractor, and material supplier establish that the use of joint checks in similar transactions is a commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBE's do not participate.
3. A material or supply contract may not bear an excessive ratio relative to the DBE subcontractor's normal capacity.
4. There may not be any exclusive arrangement between one prime and one DBE in the use of joint checks that may bring into question whether the DBE is independent of the prime contractor.
5. Any arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the supplier.
6. The prime contractor may act solely as the payer of the joint check, and may not have responsibility for establishing the terms of the agreement between the DBE subcontractor and the supplier.
7. The DBE must be responsible for receiving the check from the prime contractor and delivering the check to the supplier.



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

8. The prime contractor cannot require the DBE subcontractor to use a specific supplier, and the prime contractor may not participate in the negotiation of unit prices between the DBE subcontractor and the supplier.

Procedure and Compliance:

1. BECO must approve the agreement for the use of joint checks in writing before any joint checks are issued. The prime contractor shall submit a DBE joint check request form, available from the BECO website, along with the joint check agreement, to LPA/Subrecipient and BECO through email within seven calendar days from the time the subcontract is executed.
2. After obtaining authorization from BECO for the use of joint checks, the prime contractor, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the agreement by the LPA/Subrecipient.
3. Copies of canceled checks must be submitted, with the payment information for the period in which the joint check was issued, electronically through email to LPA/Subrecipient Procurement Office and made available for review at the time of the onsite CUF review. The prime contractor, DBE, and supplier each have an independent duty to report to the LPA/Subrecipient in the case of any change from the approved joint check arrangement.
4. Any failure to comply will be considered by the LPA/Subrecipient, with ADOT concurrence to be a material breach of this contract and will subject the prime contractor, DBE, and supplier to contract remedies and, in the case of serious violations, a potential for termination of the contract, or other remedies which may prevent future participation by the offending party.

10. DBE Termination/Substitution:

(LPA EPRISE 24.0)

General Requirements:

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

Contractor Notice of Termination/Substitution:

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

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

Contractor Request for Termination/Substitution:

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

1. The date the contractor determined the DBE to be unwilling, unable, or ineligible to perform.
2. A brief statement of facts describing the situation and citing specific actions or inaction by the DBE firm giving rise to contractor's assertion that the DBE firm is unwilling, unable, or ineligible to perform.
3. A brief statement of the good faith efforts undertaken by the contractor to enable the DBE firm to perform.
4. The total dollar amount currently paid for work performed by the DBE firm.



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

5. The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and over which the contractor and the DBE firm have no dispute.
6. The projected date that the contractor requires a substitution or replacement DBE to commence work, if consent is granted to the request.
7. The DBE's response to the notice of intent to terminate. If there is no response from the DBE within the time allowed in the notice of intent to terminate, the contractor shall state that no response was received.

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

Good Cause:

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

1. Fails or refuses to execute a written contract.
2. Fails or refuses to perform the work of its subcontract in a way consistent with normal industry practice standards. However, good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
3. Fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond/insurance requirements.
4. Becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. Is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal or state law.
6. Is not a responsible contractor.
7. Voluntarily withdraws from the project and provides written notice of its withdrawal to the Department.
8. Is ineligible to receive DBE credit for the type of work required.
9. A DBE owner dies or becomes disabled with the result that the firm is unable to complete its work on the contract.
10. Other documented good cause that the BECO determines compels the termination or substitution of the DBE subcontractor.

DBE Termination/Substitution Good Faith Effort:

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

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

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

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



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

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

Sanctions:

Failure by the contractor to carry out the requirements of these DBE Termination/Substitution specifications is a material breach of contract and will result in such remedies as the LPA/Subrecipient deems appropriate, with ADOT concurrence, which will include, but are not limited to the assessment of liquidated damages. The LPA/Subrecipient will deduct from monies due or becoming due to the contractor, the dollar amount of the wrongfully substituted/replaced DBE subcontract plus 25 percent of the amount remaining to be paid to the DBE as liquidated damages. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

11. Certification of Final DBE Payments: (LPA EPRISE 25.0)

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

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

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

12. Sanctions for Not Meeting Contract DBE Goal: (LPA EPRISE 26.0)

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

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

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

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

27.0 False, Fraudulent, or Dishonest Conduct: (LPA EPRISE 27.0)

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

7.4. **CONSTRUCTION AND PROFESSIONAL SERVICES/DESIGN CONTRACTS
PROMPT PAY AND PAYMENT REPORTING PROVISIONS**

**** FOR USE ON LPA FEDERAL AID PROJECTS ****

(07/24/2023)

MEASUREMENTS AND PAYMENT:

(A) Partial Payments:

If satisfactory progress is being made, the contractor shall receive a payment based on the amount of work completed. Progress payments may be made by the LPA/Subrecipient Procurement Office to the contractor on the basis of an approved estimate of the work performed during a preceding period of time. The progress payments will be paid on or before 14 days after the estimate of the work is approved. The estimate of the work will be deemed received by the LPA/Subrecipient Procurement Office on submission to the person designated by the LPA/Subrecipient Procurement Office for the submission, review or approval of the estimate of the work. The LPA/Subrecipient Procurement Office by mutual agreement may make progress payments on contracts of less than 90 days and will make monthly progress payments on all other contracts. Payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under the contract may include payment for material and equipment.

An estimate of the work submitted will be deemed approved and certified for payment after seven days from the date of submission unless before that time the LPA/Subrecipient Procurement Office or Designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the contract. The contractor shall work with the LPA/Subrecipient or the LPA/Subrecipient Designee to finalize monthly estimate. The progress payments will be paid on or before 14 days after the estimate of the work is certified and approved in accordance with Arizona Revised Statutes Section 34-221.

The contractor shall pay to the contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven days of receipt of each progress payment the respective amounts allowed the contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest.

No contract for construction services may materially alter the rights of any contractor, subcontractor, or material supplier to receive prompt and timely payment.

A subcontractor may notify the LPA/Subrecipient Procurement Office in writing requesting that the subcontractor be notified by the Subrecipient Procurement Office in writing within five days from payment of each progress payment made to the contractor.

(B) No Retainage on Progress Payments:

- (1) This is a federally-funded project. Therefore, notwithstanding A.R.S. § 34-221, the LPA/Subrecipient Procurement Office will not withhold retainage from progress payments. Neither the contractor, nor the subcontractor of any tier, may withhold any retainage on progress payments to subcontractors or suppliers of any tier.
- (2) This provision does not prevent the LPA/Subrecipient Procurement Office from withholding retainage or reducing payments where otherwise provided in the contract. These cases may include, but are not limited to:
 - (a) Delayed work;
 - (b) Work that is not satisfactorily performed; or
 - (c) A failure to submit necessary reports, certifications, or documents to the LPA/Subrecipient Procurement Office.

(C) Subcontractor Payments:

(1) No Retainage:

- (a) This is a federally-funded project. Therefore, notwithstanding A.R.S. § 34-221, neither the contractor, nor the subcontractor of any tier, may withhold any retainage on progress payments to subcontractors or suppliers of any tier.
- (b) Pursuant to Subsection (B)(2) of this Specification, the contract does not prevent the LPA/Subrecipient Procurement Office from withholding retainage or reducing payments where otherwise provided in the contract. These cases may include, but are not limited to:
 - (i) Delayed work;
 - (ii) Work that is not satisfactorily performed; or
 - (iii) A failure to submit necessary reports, certifications, or documents to the LPA/Subrecipient Procurement Office.
- (c) When the LPA/Subrecipient Procurement Office withholds retainage or reduces payments under Subsection (B)(2) of this Specification, the contractor may withhold retainage on progress payments to subcontractors or suppliers of any tier. However, the contractor may only withhold a reasonable amount of retainage.
- (d) For the purpose of this section, a “reasonable amount” of retainage is based on the subcontractor’s involvement or the supplier’s involvement in the cause for the LPA/Subrecipient Procurement Office’s reduction of payment. The final amount retained from all subcontractors and suppliers

shall not be higher than the amount retained by the LPA/Subrecipient. However, tier subcontracts shall include provisions that comply with this section.

(2) No Set-offs Arising from Other Contracts:

If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.

(3) Partial Payment:

The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the LPA/Subrecipient Procurement Office. Notwithstanding any provision of Arizona Revised Statutes Section 34- 221, the parties may not agree otherwise.

(4) Final Payment:

The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(5) Payment Reporting:

For the purposes of this subsection “Reportable Contracts” means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any tier with a DBE material supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the LPA DBE System which can be accessed at AZ UTRACS on the Arizona Transportation Business Portal at www.azutracs.com. No later than fifteen calendar days after the preconstruction conference, the contractor shall log into the system and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter the subcontractor information in the LPA DBE System. Reportable contracts information shall be entered into the system no later than five calendar days after approval by the LPA/Subrecipient Procurement Office.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. The contractor shall provide

information for payments made on all Reportable Contracts during the previous month by the last day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the LPA DBE System.

In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract within 15 days of receipt of electronic payment notification and the contractor shall actively monitor the system to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the system between payment amounts it reports and payment confirmation amounts reported by others.

The contractor shall ensure that all Reportable Contract payment activity is in the LPA DBE System. This includes all lower-tier Reportable Contracts.

The contractor shall maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the system.

The contractor shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

(a) Sanctions for Inadequate Reporting:

For each month that the contractor fails to submit timely and complete payment information the LPA/Subrecipient Procurement Office will retain \$5,000 as sanctions from the monies due to the contractor. After 90 consecutive days of non-reporting, the sanctions will increase to \$10,000 for each subsequent month which the contractor fails to report until the information is provided. These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

(6) Completion of Work:

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the LPA/Subrecipient Procurement Office.

(7) Disputes:

If there is a discrepancy between what is reported by the contractor in the LPA DBE System and what the subcontractor indicates, an alert email will automatically be sent to the contractor. The

email will be sent to the email address provided by the contractor in the LPA DBE System. It is the contractor's responsibility to ensure that the email address in the system is kept current.

The contractor shall provide a verifiable explanation of the discrepancy in the LPA DBE System as early as practicable but in no case later than seven days after the date of the alert email.

The LPA/Subrecipient will determine whether the contractor has acted in good faith concerning any such explanations. The LPA/Subrecipient and ADOT BECO reserves the right to request and receive documents from the contractor and all subcontractors of any tier, in order to determine whether prompt payment requirements are met.

The contractor shall implement and use the dispute resolution process outlined in the subcontract or by following the LPA/Subrecipient escalation process, to resolve payment disputes.

(8) Non-compliance:

Failure to make prompt partial payment, or prompt final payment including any retention, within the time frames established above, will result in remedies, as the LPA/Subrecipient Procurement Office deems appropriate, which may include but are not limited to:

- (a) Sanctions: These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.
 - (i) The LPA/Subrecipient Procurement Office will withhold two times the disputed dollar amount not paid to each subcontractor.
 - (ii) If full payment is made within 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the amount withheld by the LPA/Subrecipient Procurement Office will be released.
 - (iii) If full payment is made after 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the LPA/Subrecipient Procurement Office will release 75 percent of the funds withheld. The LPA/Subrecipient Procurement Office will retain 25 percent of the monies withheld as sanctions.

- (b) Additional Remedies. If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more projects within 24 months, the LPA/Subrecipient Procurement Office may, in addition, invoke the following remedies:
 - (i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors, subject to the sanctions described in paragraph (a) above,
 - (ii) Terminate the contract for default,
 - (iii) Disqualify the contractor from future bidding, temporarily or

(iv) permanently, depending on the number and severity of violations, if applicable.

In determining whether sanctions will be assessed, the extent of the sanctions, or additional remedies assessed, the LPA/Subrecipient will consider whether there have been other violations on this or other contracts, whether the failure to make prompt payment was due to circumstances beyond the contractor's control, and other circumstances. The contractor may, within 15 calendar days of receipt of the decision of the LPA/Subrecipient, escalate the decision according to the contract's escalation process.

7.5. TITLE VI ASSURANCE

City of Tempe
Title VI/Non-Discrimination Assurances
DOT Order No. 1050.2A

The *City of Tempe* (herein referred to as the "Recipient"), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through *Federal Highway Administration* and *Arizona Department of Transportation*, is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964)

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its *Federal Aid Highway Program*.

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard

to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all *Federal Aid Highway Program* and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*"The **City of Tempe**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
- b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

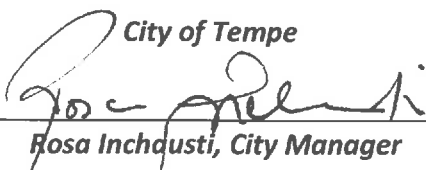
- a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;
- or
- b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, **City of Tempe** also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing *Federal Highway Administration* or *Arizona Department of Transportation* access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the *Federal Highway Administration* or *Arizona Department of Transportation*. You must keep records, reports, and submit the material for review upon request to *Federal Highway Administration*, *Arizona Department of Transportation*, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

City of Tempe gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the *Federal Highway Administration* and *Arizona Department of Transportation*. This ASSURANCE is binding on Arizona, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the *Federal Aid Highway Program*. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

City of Tempe
by 
Rosa Inchausti, City Manager

DATED 7/1/2021

APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *Federal Highway Administration or the Arizona Department of Transportation*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient, the *Federal Highway Administration or Arizona Department of Transportation* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration or Arizona Department of Transportation*, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient, the *Federal Highway Administration, or Arizona Department of Transportation* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the City of Tempe will accept title to the lands and maintain the project constructed thereon in accordance with *Title 23, United States Code the Regulations for the Administration of Federal Aid for Highways*, and the policies and procedures prescribed by the *Arizona Department of Transportation, Federal Highway Administration* of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252;42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the City of Tempe all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto City of Tempe and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the City of Tempe, its successors and assigns.

The City of Tempe, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the City of Tempe will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the ***City of Tempe*** pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, ***City of Tempe*** will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the ***City of Tempe*** will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the ***City of Tempe*** and its assigns*.

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by City of Tempe pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, City of Tempe will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, City of Tempe will there upon revert to and vest in and become the absolute property of City of Tempe and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

7.6. EEO (Equal Opportunity Employment)

7.6.1. CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUB-CONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS APRIL, 1969

The bidder _____, proposed subcontractor _____, hereby certifies that he has _____, has not _____, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that he has _____, has not _____, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

(Company)

By: _____

(Title)

Date: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1. 7b (1),) and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5 (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Information concerning Standard Form 100 (EEO-1) is available from:

Joint Reporting Committee
P.O. Box 19100
Washington, D.C. 20036-9100

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of the Federal Contract Compliance, U.S. Department of Labor.

7.6.2. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS EXECUTIVE ORDER 11246, (December 9, 2014)

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:

- (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
- (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR [60-4.5](#)) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the

provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the *Federal Register* in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must

have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when

the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority,

female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part [60-3](#).

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

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

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a

contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority.

Consequently, the Contractor may be in violation of the Executive Order if a group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

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

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

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation

of these specifications and Executive Order 11246, as 13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR [60-4.8](#).

14. The Contractor shall designate a responsible official to monitor all

amended employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work

was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

7.6.3. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246) JULY 1, 1978 (Revised November 3, 1980) (Revised April 15, 1981)

1. The bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

	Minority	Female
Tucson and balance of Pima County	24.1	6.9
Cochise, Graham, Greenlee, And Santa Cruz Counties	27.0	6.9
Phoenix and balance of Maricopa County	15.8	6.9
Apache, Coconino, Gila, Mohave, Navajo, Pinal, Yavapai and Yuma Counties	19.6	6.9

These goals are applicable to all Contractor's construction work (whether or not it is Federal or federally assisted) performed in all areas where he has Federal or federally assisted work.

Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

7.6.4. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE REPORTS

(Project, Training and Annual)

Federal-Aid Projects

February 1, 1977; Revised July 1, 1978; Revised November 3, 1980

Revised April 15, 1981; Revised September 7, 1983; Revised October 15, 1998;

Revised August 1, 2005; Revised March 1, 2015; Revised August 24, 2016

For each contract in the amount of \$10,000 or more, and for each subcontract, regardless of tier not including material suppliers, in the amount of \$10,000 or more, the Contractor and each subcontractor regardless of tier shall submit an annual Equal Employment Opportunity (EEO) Report containing all the information required on Form FHWA-1391.

The Staffing figures to be reported should represent the project workforce on board in all or any part of the last payroll period preceding the end of July.

The report shall be submitted no later than August 15 to the City of Tempe's compliance officer.

7.6.5. Executive Order 2009-09

**PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS
NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS
AND SUBCONTRACTORS**

**Superseding Executive Order 99-4 and Amending Executive
Order 75-5**

WHEREAS, Executive Order 99-4 was effectuated to assure that persons or entities contracting with the State of Arizona or its political subdivisions comply with the provisions of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et. Seq.) and with Arizona's Civil Rights Act (Title 41, Chapter 9, Article 4);

WHEREAS, Executive Order 99-4 correctly states that various religious organizations are exempted from Arizona's Civil Rights Act;

WHEREAS, Executive Order 99-4 does not expressly state the federal and state exemptions for Indian tribes under both the federal and State Civil Rights Acts;

WHEREAS, 42 U.S.C. § 200e(b)(1) exempts tribes from the definition of employer;

WHEREAS, A.R.S. § 41-1461 4 (b)(i) also exempts Indian tribes from the definition of employers to whom the Arizona Civil Rights Act applies;

WHEREAS, Indian tribes across the State have recently begun to experience difficulty contracting with the State, often for money or services to which they are lawfully entitled, as a result of their exclusion from specified exemptions within Executive Order 99-4;

WHEREAS, the Attorney General's Office has in some cases interpreted the existing provisions as requiring tribes to waive rights guaranteed by both federal and State law;

WHEREAS, a modification is necessary to expressly provide that the exemptions found in federal and State law continue in full force and effect;

NOW, THEREFORE, I, Janice K. Brewer, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this State, hereby order and direct as follows:

1. Executive Order 75-5 is hereby amended as follows:

PART I – Non-discrimination in employment by government contractors and subcontractors.

Unless otherwise exempted by federal or state civil rights laws, all government contracting agencies shall include in every government contract hereinafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, or national origin. The contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, sex or national origin. Such action shall include, but is not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

A continued Executive Order No. 75-5 is hereby amended to permit government contractors and subcontractors that are exempted from compliance under Title 41, chapter 9, article 4, Arizona Revised Statutes or 42 U.S.C. § 200e(b)(1), to provide employment preferences consistently with federal and state statutes;

Therefore, Executive Order 75-5 does not apply to Indian tribes. It likewise does not apply to religious organizations with respect to the employment of individuals of a particular religion to perform work connected with the activities of the employer. It also provides that religious organizations may provide employment preferences based upon religion when dealing with a bona fide occupational qualification reasonably necessary to the operation of the religious organization. This is consistent with the provisions of the Civil Rights Act of 1964 (42 U.S.C.

2000e, et seq.). In addition, in the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193, Congress provided that religious organizations are eligible for the receipt of federal funds on the same basis as other private organizations.

Executive Order No. 75-5 prohibits all other government contractors and subcontractors from discriminating against any employee or applicant for employment because of race, age, color, religion, sex or national origin. Executive

Order No. 75-5 further requires all government contractors and subcontractors to take action to insure that applicants are employed and employees are treated during employment without regard to their race, age, color, religion, sex or national origin.

- B. The contractor will in all solicitations or advertisement for employees placed by or on behalf of the contractor state that all qualified applicants will receive consideration for employment without regard of race, age, color, religion, sex, or national origin.
- C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under the Executive Order and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor will furnish all information and reports required by the contracting agency and will permit access to his books and records. And accounts by the contracting agency and the Civil Rights Division for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- E. In the event of the contractor's noncompliance with the nondiscrimination clauses of the contract or with any such rules, regulations or orders of the Arizona Civil Rights Division said noncompliance will be considered a material breach of the contract and this contract may be cancelled, terminated or suspended, in whole or in part, and the contractor may be declared ineligible for future government contracts until said contractor has been found to be in compliance with the provisions of this order and the rules and regulations of the Arizona Civil Rights Division, and such sanctions may be imposed and remedies invoked as provided in Part II of this order, and the rules and regulations of the Arizona Civil Rights Division.
- F. The contractor will include the provisions of paragraphs A through E in every subcontractor purchase order so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to the subcontract or purchase orders the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vender as a result of such direction by the contracting agency, the contractor may request the State of Arizona to enter into such litigation to protect the interest of the Sate of Arizona.
- G. Each contractor having a contract containing the provisions prescribed in this section shall file and shall cause each of his subcontractors to file compliance reports with the contracting agency or the Civil Rights Division, as may be directed. Compliance reports shall be filed within such times and shall contain such information as the practices, policies, programs and employment policies, programs and employment statistics of the contractor and each subcontract and shall be in form as the Arizona Civil Rights Division may prescribe.
- H. Bidders or prospective contractors of subcontractors shall be required to state whether they have participated in any previous contract subject to the provisions of

this order or any preceding similar Executive Order and in such event to submit on behalf of themselves and the proposed subcontractors compliance reports prior to, or as an initial part of negotiation of a contract.

- I. Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers of providing or supervising apprenticeship or training for such workers, the compliance report shall include such information from such labor unions or agency practices and policies affecting compliance as the contracting agency or Civil Rights Division may prescribe: provided that, to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify the contracting agency as part of its compliance report and shall set forth what efforts he has made to obtain such information.
- J. The contracting agency or the Civil Rights Division shall require that the bidder or prospector contractor or subcontractor shall submit as part of his compliance report a statement in writing signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training with which the bidder or prospective contractor deals with supporting information to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purpose and provisions of this order. In the event that the union or the agency shall refuse to execute such a statement, the compliance shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Civil Rights Division may require.

PART II- Enforcement

- A. Each contracting agency shall be primarily responsible for obtaining compliance with this Executive Order with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Civil Rights Division in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this order and the rules and regulations and orders of the Civil Rights Division issued pursuant to this order. They are directed to cooperate with the Civil Rights Division and to furnish the Division such information and assistance as it may require in the performance of the Division's functions under this order. They are further directed to appoint or designate from among the agency personnel compliance officers. It shall be the duty of such officers to first seek compliance with the objective of this order by conference, conciliation, mediation, or persuasion.
- B. The Civil Rights Division may investigate the employment practices of any government contractor if subcontractor of initiate such investigation by the appropriate contracting agency or determine whether or not the contractual

provisions specified in this order have been violated. Such investigations shall be conducted in accordance with the procedures established by the Civil Rights Division and the investigating agencies shall report to the Civil Rights Division any action taken or recommended. The Civil Rights Division may receive and investigate or cause to be investigated complaints by employees or prospective employees of a government contractor or subcontractor which alleges discrimination contrary to the contractual provisions specified in Part I of this order. If the investigation is conducted for the Civil Rights Division by a contracting agency, that agency shall report to the Civil Rights Division what action has been taken or its recommendation with regard to such complaint.

- C. The Civil Rights Division shall use its best efforts directly and through contracting agencies, other interested state and local agencies, contractors and all other available instrumentalities to cause any labor union engaged in work under government contracts or any agency referring workers or providing or supervising apprenticeship or training for it in the course of such work or cooperate in the implementation of the purposes of this order.
- D. The Civil Rights Division or any agency, officer, or employee in the executive branch of the government designated by rule, regulation or order of the Civil Rights Division may hold such hearings, public or private, as the Division may deem advisable for compliance, enforcement of educational purposes. The Civil Rights Division may hold or cause to be held hearings in accordance with rules and regulations issued by the Civil Rights Division prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this order.
- E. No order for debarment of any contractor from further government contracts under this order shall be made without affording the contractor an opportunity for a hearing.
- F. Sanctions and Penalties. In accordance with such rules, regulations or orders as the Civil Rights Division may issue or adopt, the Civil Rights Division or the appropriate contracting agency may publish or cause to be published the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this order and with the rules, regulations and orders of the Civil Rights Division.
 - 1. Contracts may be cancelled, in whole or in part, terminated, or suspended absolutely, or continuation of contracts may be conditioned upon a program for future compliance approved by the contracting agency or the Civil Rights Division: provided that any contracting agency shall refrain from entering into further contracts, extensions or other modifications of existing contracts with any noncomplying contractor until such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this order.
 - 2. Under rules and regulations prescribed by the Civil Rights Division, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order by methods of conference, conciliation, mediation and persuasion before proceedings shall be instituted under this order or before a contract shall be cancelled or terminated in whole or in part under this order for failure of a

contractor or subcontractor to comply with the contract provisions of this order.

G. This Executive Order shall become effective immediately of its issuance.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Janice K. Brewer
GOVERNOR

DONE at the Capital in Phoenix, Arizona this 20th day of October
In the Year Two Thousand and Nine and of the Independence of
the United States of America the Two Hundred and Thirty-Third.

ATTEST:

Kern Blount

SECRETARY OF STATE

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

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

(ii) The classification is used in the area by the construction industry; and

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

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements (1) Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

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

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

7.8. CARGO PREFERENCE ACT

The Federal Highway Administration (FHWA) in partnership with the Federal Maritime Administration has mandated the implementation of 46 CFR 381 making the requirements of the Cargo Preference Act (CPA) applicable to the Federal Aid Highway Program. The requirements apply to items transported by ocean vessel.

The requirements of 46 CFR 381 apply to materials or equipment acquired for a specific federal-aid highway project. In general, the requirements are not applicable to goods or materials that come from inventories independent of FHWA-funded contracts.

Contract Requirements

Contractor shall comply with the requirements of the Cargo Preference Act 46 CFR 381.7(a)-(b). By executing a construction contract for this project, Contractor agrees:

- (1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in the paragraph above to both the Engineer and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

7.9. CHANGED CONDITIONS

In accordance with 23 CFR § 635.109(a), the following provisions apply to this Project.

(1) Differing Site Conditions

- (i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
- (ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits,

will be made and the contract modified in writing accordingly. The engineer will notify Contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to Contractor will be allowed unless Contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

(2) Suspensions of Work Ordered by the Engineer

(i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, Contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate Contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. Contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless Contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(3) Significant Changes in the Character of Work

(i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project.

Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and Contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against Contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term “significant change” shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

7.10. CHANGES AND EXTRA WORK

In accordance with 23 CFR § 635.120, the following provisions apply to this Project.

(a) Following authorization to proceed with a project, all major changes in the plans and contract provisions and all major extra work shall have formal approval by the Division Administrator in advance of their effective dates. However, when emergency or unusual conditions justify, the Division Administrator may give tentative advance approval orally to such changes or extra work and ratify such approval with formal approval as soon thereafter as practicable.

(b) For non-major changes and non-major extra work, formal approval is necessary but such approval may be given retroactively at the discretion of the Division Administrator. The STD should establish and document with the Division Administrator’s concurrence specific parameters as to what constitutes a non-major change and non-major extra work.

(c) Changes in contract time, as related to contract changes or extra work, should be submitted at the same time as the respective work change for approval by the Division Administrator.

(d) In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with the contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

(e) The STD shall perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order. The method and degree of the cost analysis shall be subject to the approval of the Division Administrator.

(f) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and concurrence by the Division Administrator.

CONTRACT TIME AND CONTRACT TIME EXTENSIONS

In accordance with 23 CFR § 635.120, the following provisions apply to this Project.

(a) The STD should have adequate written procedures for the determination of contract time. These procedures should be submitted for approval to the Division Administrator within 6 months of the effective date of this Final Rule.

(b) Contract time extensions granted by a STD shall be subject to the concurrence of the Division Administrator and will be considered in determining the amount of Federal participation. Contract time extensions submitted for approval to the Division Administrator, shall be fully justified and adequately documented.

7.11. ACCESS AND RECORDS RETENTION CONTRACTOR SUBCONTRACTOR RECORDS (Reference to A.R.S. 35-214)

Contractor and Subcontractor Records:

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

All of the above material shall be made available to the City of Tempe for auditing, inspection and copying and shall be produced, upon request; at the City offices located 31 E. 5th St., Tempe, AZ, 85281.

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

7.12. Federal Immigration and Nationality Act:

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

(B) Compliance Requirements: By submission of a bid, the contractor warrants that the contractor and all proposed subcontractors are and shall remain in compliance with all federal, state and local immigration laws and regulations relating to the immigration status of their employees who perform services on the contract. The State may, at its sole discretion, require evidence of compliance from the contractor or subcontractor. Should the State request evidence of compliance, the contractor or subcontractor shall have ten working days from receipt of the request to supply adequate information.

The Department will accept, as evidence of compliance, a showing by the contractor or subcontractor that it has followed the employment verification provisions of the Federal Immigration and Nationality Act as set forth in Sections 274A and 274B of that Act, including implementation of

regulations and agreements between the Department of Homeland Security and the Social Security Administration's verification service.

(C) Sanctions for Non-Compliance: Failure to comply with the immigration laws or to submit proof of compliance constitutes a material breach of contract. The Department will reduce the contractor's compensation by \$10,000 for the initial instance of non-compliance by the contractor or a subcontractor. Should the same contractor or subcontractor commit subsequent violations within a two-year time period from the initial violation, the contractor's compensation will be reduced by \$50,000 for each violation. The third instance by the same contractor or subcontractor within a two-year period may result, in addition to the \$50,000 reduction in compensation, in removal of the offending contractor or subcontractor, suspension of work in whole or in part or, in the case of a third violation by the contractor, termination of the contract for default. In addition, the Department may debar a contractor or subcontractor who has committed three violations within a two-year period for up to one year. For purposes of this paragraph, a violation by a subcontractor does not count as a violation by the contractor. Any delay resulting from a sanction under this subsection is a non-excusable delay. The contractor is not entitled to any compensation or extension of time for any delays or additional costs resulting from a sanction under this subsection. An example of the sanctions under this subsection is presented in the following table:

Offense by:			Reduction in Compensation
Contractor	Subcontractor A	Subcontractor B	
First			\$10,000
	First		\$10,000
	Second		\$50,000
		First	\$10,000
	Third		\$50,000 *
* May, in addition, result in removal of the subcontractor and/or debarment of the subcontractor.			

7.13. ON THE JOB TRAINING

There is no on-the-job training requirement for this project. Regardless of the number of trainees and training hours, however, the Contractor shall make every possible effort to provide additional trainees with training and shall see that all trainees are afforded every opportunity to participate in as much training as is practically possible to provide. Due to turnover and attrition of trainees in any one trainee slot, it is expected that continuous trainee replacements may be necessary during the contract work period.

7.14. ENERGY CONSERVATION

In accordance with 49 CFR 18.36(i)(13), Contractor and every Subcontractor on this Project shall comply with the mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

"General Decision Number: AZ20250045 01/03/2025

Superseded General Decision Number: AZ20240045

State: Arizona

Construction Type: Highway

County: Maricopa County in Arizona.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> ◆ Executive Order 14026 generally applies to the contract. ◆ The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> ◆ Executive Order 13658 generally applies to the contract. ◆ The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
 0 01/03/2025

CARP1912-003 07/01/2024

	Rates	Fringes
Carpenter, Excludes Formwork Concrete.....	\$ 35.89	14.98

ENGI0012-046 12/01/2024		

	Rates	Fringes
POWER EQUIPMENT OPERATOR: Bulldozer.....	\$ 35.56	18.12

ENGI0012-053 12/01/2024		

	Rates	Fringes
POWER EQUIPMENT OPERATOR: Tractor.....	\$ 35.56	18.12

ENGI0012-063 12/01/2024		

	Rates	Fringes
POWER EQUIPMENT OPERATOR: Oiler.....	\$ 32.29	18.12

ENGI0012-065 12/01/2024		

	Rates	Fringes
POWER EQUIPMENT OPERATOR: Field Equipment Serviceperson.....	\$ 35.56	18.12

ENGI0012-066 12/01/2024		

	Rates	Fringes
POWER EQUIPMENT OPERATOR: Backhoe/Backhoe & Loader Combo/Track Backhoe.....	\$ 35.56	18.12

ENGI0012-069 12/01/2024		

	Rates	Fringes
POWER EQUIPMENT OPERATOR: Loader/Front End Loader.....	\$ 35.56	18.12

ENGI0012-070 12/01/2024		

	Rates	Fringes
TRUCK DRIVER Off Road Truck.....	\$ 35.56	18.12

ENGI0012-071 12/01/2024		

	Rates	Fringes
POWER EQUIPMENT OPERATOR: Crane/Derrick.....	\$ 36.64	18.12

ENGI0012-072 12/01/2024		

	Rates	Fringes
Power Equipment Operator: Excavator/Trackhoe		
1/2 cubic yard or smaller...	\$ 35.56	18.12
Greater than 1/2 cubic yard.	\$ 36.64	18.12

ENGI0012-073 12/01/2024

	Rates	Fringes
POWER EQUIPMENT OPERATOR: Grade Checker.....	\$ 36.64	18.12

ENGI0012-074 12/01/2024

	Rates	Fringes
POWER EQUIPMENT OPERATOR: Motor Grader/Blade.....	\$ 36.64	18.12

ENGI0012-075 12/01/2024

	Rates	Fringes
POWER EQUIPMENT OPERATOR: Mechanic.....	\$ 37.67	18.12

IRON0075-014 08/01/2024

	Rates	Fringes
Ironworker.....	\$ 33.00	18.91

LAB01184-016 06/01/2024

	Rates	Fringes
Power Equipment Operator: Horizontal Directional Drill.....	\$ 30.72	8.37

LAB01184-017 06/01/2024

	Rates	Fringes
Laborer: Fence Erector.....	\$ 26.15	8.37

LAB01184-021 06/01/2024

	Rates	Fringes
Traffic Control.....	\$ 26.15	8.37

LAB01184-025 06/01/2024

	Rates	Fringes
Laborer: Asphalt, Includes Raker, Shoveler, Spreader and Distributor.....	\$ 28.65	8.37

LAB01184-027 06/01/2024

	Rates	Fringes
Laborer: Grade Setter.....	\$ 28.65	8.37

LAB01184-029 06/01/2024		

	Rates	Fringes
LABORER: Guardrail Installer.....	\$ 28.65	8.37

LAB01184-033 06/01/2024		

	Rates	Fringes
Power Equipment Operator: Trencher.....	\$ 29.62	8.37

LAB01184-044 06/01/2024		

	Rates	Fringes
Power Equipment Operator: Forklift.....	\$ 29.62	8.37

LAB01184-047 06/01/2024		

	Rates	Fringes
Truck Driver: Concrete.....	\$ 29.62	8.37

LAB01184-049 06/01/2024		

	Rates	Fringes
Truck Driver: Water.....	\$ 29.62	8.37

SUAZ2023-022 11/19/2024		

	Rates	Fringes
Carpenter: Formwork Concrete.....	\$ 29.86	8.89
Cement Mason/Concrete finisher...	\$ 30.41	0.00
Electrician.....	\$ 29.00	7.58
Laborer: Concrete Saw (Hand Held/Walk Behind).....	\$ 25.22	5.08
Laborer: General.....	\$ 23.32	7.09
Laborer: Landscape Laborer.....	\$ 19.00	6.34
Laborer: Mason Tender.....	\$ 25.92	7.09
Laborer: Pipelayer.....	\$ 25.97	7.09
Painter: Pavement Marking.....	\$ 23.35	6.34
Painter: Sign and Display Erector.....	\$ 18.03	0.00

Power Equipment Operator:

Bobcat/Skid Steer/Skid Loader....\$ 29.91	9.11
Power Equipment Operator: Boom/Crane Truck.....\$ 43.11	10.87
Power Equipment Operator: Broom/Sweeper.....\$ 25.95	6.62
Power Equipment Operator: Compactor/Roller.....\$ 30.24	0.00
Power Equipment Operator: Concrete Pump Truck.....\$ 43.11	10.87
Power Equipment Operator: Concrete Screed.....\$ 26.41	7.64
Power Equipment Operator: Drill Rig/Auger.....\$ 36.80	13.07
Power Equipment Operator: Milling Machine.....\$ 31.16	0.00
Power Equipment Operator: Paver/Spreader/Finish equipment (asphalt, aggregate, & concrete).....\$ 32.67	0.00
Power Equipment Operator: Scraper.....\$ 29.69	0.00
Truck Driver: Dump.....\$ 26.71	7.09
Truck Driver: Oil Distributor....\$ 29.41	7.63
Truck Driver: Sweeper.....\$ 20.24	5.48

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====
Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date,

6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The "SA" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

=====

END OF GENERAL DECISION"

7.16. JOBSITE POSTER REQUIREMENTS

**CITY OF TEMPE
Contractor Compliance Review
ONSITE BULLETIN BOARD INSPECTION**

DATE:			PRIME CONTRACTOR:					
PROJECT/TRACS NO.:			FEDERAL-AID NO.:			COUNTY:		
BULLETIN BOARD REQUIREMENTS <i>(Binder style bulletin board is not acceptable)</i>								
	N/A	YE S	NO		N/A	YE S	NO	
Was the bulletin board clearly accessible to all employees?					Was the bulletin board clearly accessible to all job applicants?			
Was the bulletin board in an upright position?					Was the bulletin board at a convenient height for viewing?			
Was bulletin board in a safe location?					Was the bulletin board large enough to legibly display all posters?			
Were the bulletin board posters protected by a transparent covering?					Are documents: stacked <input type="checkbox"/> or spread out <input type="checkbox"/> ?			
POSTER REQUIRED ON BULLETIN BOARD – Federal-Aid Projects								
	N/A	YE S	NO		N/A	YE S	NO	
1. Contractor’s EEO Policy Statement (current) Note: Prime/subs over \$10,000 EEO Policy Statement posted individually					18. Employee Rights and Responsibilities Under the Family and Medical Leave Act (WHD 1420) ; English (Rev. 04/2023)			
2. Contractor’s Letter Appointing EEO Officer for Project Note: Needs name, address, phone number					19. Employee Rights and Responsibilities Under the Family and Medical Leave Act (WHD 1420) ; Spanish (Rev. 04/2023)			
3. Contractor’s 24-hour Emergency Phone Numbers (current)					20. Employee Polygraph Protection Act (WH 1462) ; English (Rev. 02/2022)			
4. EEOC Know Your Rights ; English (Rev. 06/2023)					21. Employee Polygraph Protection Act (WH 1462) ; Spanish (Rev. 02/2022)			
5. EEOC Know your Rights ; Spanish (Rev. 10/2022)					22. Employee Rights Under the National Labor Relations Act ; English (Rev. 05/2022) ***MUST BE 11X17***			
6. Pay Transparency Nondiscrimination Provision ; English (Rev. 12/2016)					23. Employee Rights Under the National Labor Relations Act ; Spanish (Rev. 05/2022) ***MUST BE 11X17***			
7. Pay Transparency Nondiscrimination Provision ; Spanish (Rev. 12/2016)					24. Project Specific Notices – Ex.: EPA/NPDES Notice of Intent, Dust Permit....			
8. False Statement Notice (FHWA 1022) ; English (Rev. 05/2015) *Note B					25. Arizona Minimum Wage – Fair Wages and Healthy Families Act ; English (Rev. 02/2024)			
9. False Statement Notice (FHWA 1022) ; Spanish (Rev. 05/2015) *Note B					26. Arizona Minimum Wage – Fair Wages and Healthy Families Act ; Spanish (Rev. 02/2024)			
10. Employee Rights Under the Davis-Bacon Act (WH 1321) ; English (Rev. 10/17) * Note A					27. Arizona Employee Safety and Health Protection ; English (Rev. 10/2011)			
11. Employee Rights Under the Davis-Bacon Act (WH 1321) ; Spanish (Rev. 10/17) * Note A					28. Arizona Employee Safety and Health Protection ; Spanish (Rev. 10/2011)			
12. Actual Wage Rates – Wage Determination & All Additional Classifications ; * Note D					29. Arizona Workers’ Compensation Law ; English/Spanish (Rev. 03/2019)			
13. Job Safety and Health IT’S THE LAW (OSHA 3165-04R) ; English (Rev. 2019) ***MUST BE 11X17***					30. Arizona Unemployment Insurance Coverage ; English (Rev. 08/2019)			
14. Job Safety and Health IT’S THE LAW (OSHA 3165-04R) ; Spanish (Rev. 2019) ***MUST BE 11X17***					31. Arizona Unemployment Insurance Coverage ; Spanish (Rev. 08/2019)			
15. Your Rights Under USERRA ; English (Rev. 04/2017)					32. Arizona Fair Wages Earned Paid Sick Time ; English (Rev. 07/2017)			
16. Employee Rights Under the Fair Labor Standards Act (WH 1088) ; English (Rev. 04/2023)					33. Arizona Fair Wages Earned Paid Sick Time ; Spanish (Rev. 07/2017)			
17. Employee Rights Under the Fair Labor Standards Act (WH 1088) ; Spanish (Rev. 04/2023)					34. City of Tempe Title VI Compliance Notice ; (current) English/Spanish * Note C			

(Required Posters updated 03/01/2024)

FINDINGS/COMMENTS/REMARKS:							
		YES	NO			YES	NO
Was bulletin board in compliance?				If no, was contractor notified? (See Comments above)			
Name of individual conducting inspection		Date Inspected		Date notified			

Note A: Poster copy to have the following information in the blank boxes at the bottom:

CITY OF TEMPE	CIUDAD DE TEMPE
TEL: 480-350-8670	TEL: 480-350-8670
31 E. Fifth St, MS 0108	31 E. Fifth St, MS 0108
Tempe, AZ 85281	Tempe, AZ 85281

Note B: FHWA Form 1022 – Information to add:

Under “State Transportation Agency”
Arizona Department of Transportation
Deputy State Engineer
206 S 17th Ave, Phoenix, AZ 85007

Under “Federal Highway Administration”
4000 N. Central Ave #1500
Phoenix, AZ 85012

Note C: This is a “City of Tempe specific” federal required poster.

Note D: Davis Bacon Wage Decision is project specific and is provided in the contract. Additional classifications (Conformance Requests) are project specific and approved by the Department of Labor.

7.17. ENVIRONMENTAL COMMITMENTS

DocuSign Envelope ID: E3353297-7565-49A4-8433-E9201ED31791

0000 MA TMP T0260 01C TMP-0(254)D Scottsdale Road, Curry Road to Continental Drive

ENVIRONMENTAL COMMITMENTS

The following shall be included in the project special provisions:

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

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

II. Project Mitigation Measures:

City of Tempe Responsibilities

- If any active bird nests cannot be avoided by vegetation clearing or construction activities, the Engineer will contact Julian Desang, Project Manager for the City of Tempe (480.721.4899) to evaluate the situation.
- Protected native plants within the project limits will be impacted by this project; therefore, the City of Tempe will determine if Arizona Department of Agriculture notification is needed. If notification is needed, the City of Tempe will send the notification at least 60 (sixty) calendar days prior to the start of construction.

Contractor Responsibilities

- If vegetation clearing will occur during the migratory bird breeding season (March 1 – August 31), the contractor shall avoid any active bird nests. If active bird nests cannot be avoided, the contractor shall notify the Engineer to evaluate the situation. During the non-breeding season (September 1 – February 28) vegetation removal is not subject to this restriction.
- To prevent the introduction of invasive species seeds, all earthmoving and hauling equipment shall be washed prior to entering the construction site and the contractor shall inspect all construction equipment and remove all attached debris, including plant parts, soil and mud, prior to the equipment entering the construction site.
- To prevent invasive species seeds from leaving the site, the contractor shall inspect all construction and hauling equipment and remove all debris, including plant parts, soil and mud, prior to leaving the construction site.

- The contractor in coordination with the engineer shall contact the Environmental Planning Hazardous Materials Coordinator at 602.920.3883 or 602.712.7767 at least 10 days prior to the commencement of any construction activity to ensure that an asbestos survey has been conducted within the 60 months prior to the start of the construction (Maricopa County Rule 370), or is there is a need for additional site assessment.
- The contractor shall contact the ADOT Environmental Planning Historic Preservation Team (602.712.7767 or 480.341.3029) at least 10 (ten) business days prior to the start of ground-disturbing activities to arrange for qualified personnel to monitor and be present during construction. ADOT's Environmental Planning - Historic Preservation Team will provide contact information on the qualified archaeological consultant to the Contractor for their records. ADOT's Environmental Planning - Historic Preservation Team will contact the qualified archaeological consultant regarding the project start date and provide Contractor information.
- The Contractor shall coordinate via email or phone with the qualified archaeological consultant (Christopher Garraty – 480.967.1343) and communicate the construction schedule for the duration of ground disturbing work in those areas where monitoring is needed.
- For milling activities, the roadway surface preceding the milling machine shall be kept sufficiently wet so as to prevent the generation of any visible fugitive dust particles, but not so wet as to cause excess runoff from the roadway surface onto the roadway shoulder.
- The Contractor shall ensure that an asbestos survey be conducted no more than 12 months before construction activities are scheduled to occur (Maricopa County Rule 370). This includes, but is not limited to contacting the Arizona Department of Transportation Environmental Planning hazardous materials coordinator (602.920.3882 or 602.712.7767) 30 (thirty) days prior to when construction activities are scheduled to occur to determine the need for additional site assessments.

III. Permits:

AZPDES 402 – ADEQ Construction General Permit (SP 104.09 SWDEQ)

7. CITY OF TEMPE FORMS

The parties agree that all references to this Contract include all exhibits designated in and attached to this Contract, such exhibits being incorporated into and made an integral part of this Contract for all purposes.

- 8.1. BIDDER'S CHECK SHEET**
- 8.2. COMPETITIVE SEALED BID FORMS**
- 8.3. COMPETITIVE SEALED BID CERTIFICATION FORM**
- 8.4. BIDDER'S PROJECT REFERENCES**
- 8.5. ACKNOWLEDGEMENT REGARDING LETTER OF GOOD STANDING**
- 8.6. CERTIFICATION BY THE CONTRACTOR AUTHORIZING EMPLOYEES
TO SIGN BINDING AGREEMENTS**
- 8.7. PERFORMANCE BOND FORM**
- 8.8. PAYMENT BOND FORM**
- 8.9. CONDITIONAL WAIVER AND RELEASE FOR CONTRACTOR'S
PAYMENT AND SETTLEMENT OF CLAIMS**
- 8.10. AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED
STATES**
- 8.11. COMPLIANCE WITH TEMPE CITY CODE ON ANTIDISCRIMINATION**
- 8.12. ADOT PROCUREMENT SUBCONTRACTOR REQUEST FORM (SRF)**
- 8.13. CITY ENGINEERING SECURE FACILITIES ACCESS GUIDELINES**
- 8.14. BIDDER'S LIST OF SUB-CONTRACTORS**

[SIGNATURE PAGE TO FOLLOW]

**Bike Lanes/ Pedestrian Improvements – Scottsdale Road from Curry Road to Continental Drive
Project No. 6009741**

DATED this ____ / ____ day of ____ / _____ 2025.

CITY OF TEMPE, ARIZONA

By: _____
Corey D. Woods, Mayor

By: _____
Public Works Director

ATTEST:

Recommended By:

Kara A. DeArrastia, City Clerk

Deputy Public Works Director/
City Engineer

APPROVED AS TO FORM:

Eric C. Anderson, City Attorney

Contractor warrants that the person who is signing this Contract on behalf of Contractor is authorized to do so and to execute all other documents necessary to carry out the terms of this Contract.

CONTRACTOR:
(Contractor Name here)

Signature

Printed Name

Title

Email Address

Federal I.D. No./Tax Payer I.D. No.

BIDDER’S CHECK SHEET

This check sheet lists the items a bidder must include with its sealed bid.

	Included
Affidavit of No Collusion in Bidding.....7.1.	<input type="checkbox"/>
DBE Goal Assurance7.3a	<input type="checkbox"/>
EEO Clause / Statement 7.6.1.	<input type="checkbox"/>
Competitive Sealed Bid Forms (Confirm receipt of Addenda)..... 8.2.	<input type="checkbox"/>
10% Bid Guarantee (see Invitation for Bids section 4.3.)	<input type="checkbox"/>
EMOD and Loss Ratio Information (see Invitation for Bids section 4.6.2.).....	<input type="checkbox"/>
Competitive Sealed Bid Certification Form8.3.	<input type="checkbox"/>
Bidder’s Project References.....8.4.	<input type="checkbox"/>
Acknowledgement Regarding Letter of Good Standing (see Invitation for Bids section 4.7.2)8.5.	<input type="checkbox"/>
Affidavit Demonstrating Lawful Presence in the United States (see Invitation for Bids Section 4.6.1, include if applicable)8.10.	<input type="checkbox"/>
Compliance with Tempe City Code.....8.11.	<input type="checkbox"/>
Bidder’s List of Sub-contractors8.14.	<input type="checkbox"/>

NOTE: THE BIDDER IS SOLELY RESPONSIBLE FOR SUBMITTING WITH ITS BID ALL ITEMS REQUIRED BY THIS INVITATION FOR BID DOCUMENT. THIS CHECK SHEET IS PROVIDED SOLELY TO AID THE BIDDER IN PREPARING ITS BID SUBMITTAL AND SHALL NOT BE CONSTRUED AS IMPOSING RESPONSIBILITY ON THE PART OF THE CITY OF TEMPE.

8.2.

COMPETITIVE SEALED BID FORMS

Place: Tempe, Arizona

Date: _____

Mayor and City Council
City of Tempe
Tempe, Arizona 85281

In compliance with your Invitation for Bids and all conditions of the Contract, _____, a corporation or limited liability corporation organized under the laws of the State of _____; a partnership consisting of _____; or an individual trading as _____, of the City of _____, and the County of _____, hereby proposes and agrees to furnish any and all plans, materials, labor, construction equipment, service, and transportation (all applicable taxes included) of the **BIKE LANES/ PEDESTRIAN IMPROVEMENTS – SCOTTSDALE ROAD FROM CURRY ROAD TO CONTINENTAL DRIVE, PROJECT NO. 6009741, FEDERAL AID PROJECT NO. TMP-0(254)D, ADOT TRACS NO. 0000 MA TMP T0260 01C**, and to install the material therein for City in a good and workmanlike and substantial manner and to the satisfaction of City or its properly authorized agents and strictly pursuant to and in conformity with the Contract and other documents that may be made by City or their properly authorized agents, as provided herein, at the following prices submitted through the City’s PMWeb Software System.

The undersigned hereby declares that Contractor has visited the site and has carefully examined the Contract related to the work covered by the bid submitted through the City's PMWeb Software System.

The undersigned understands that, when it is in the best interests of the City of Tempe, the City may cancel this solicitation, or may reject any and all bids in whole or in part, or may waive any informalities in the bids received.

Contractor's performance shall not start until after receiving the Notice to Proceed, and the work will be completed within 308 consecutive calendar days after the Notice to Proceed date.

The undersigned hereby acknowledges receipt of the following Addenda: _____

_____ and Contractor's bid has been adjusted to reflect any changes.

Respectfully submitted,

By: _____

Signature

Printed Name

Its: _____

Title

Contractor's License No.

Federal I.D. No./Social Security No.

Tax ID No.

For: _____

Company Name

Address: _____

Phone: _____

Fax: _____

8.3.

**COMPETITIVE SEALED BID
CERTIFICATION FORM**

**BIKE LANES/ PEDESTRIAN IMPROVEMENTS – SCOTTSDALE ROAD FROM CURRY
ROAD TO CONTINENTAL DRIVE**

PROJECT NO. 6009741

FEDERAL AID PROJECT NO. TMP-0(254)D

ADOT TRACS NO. 0000 MA TMP T0260 01C

Bidder certifies that it is a: _____ proprietorship; _____ partnership; _____ corporation; _____ other.

Arizona Sales Tax No. _____

Use Tax No. for Out-of-State Supplier _____

Taxpayer's Federal Identification No. _____

Bidder certifies that it has read, understands, and will fully and faithfully comply with this Invitation for Bids, its attachments, and any referenced documents. Bidder also certifies that the bid was independently developed without consultation with any other Bidders or potential Bidders.

Company's Legal Name: _____

Address: _____

City, State and Zip Code: _____

Telephone Number: _____

Company's Fax Number: _____

Company's Toll Free Number: _____

Signature: _____

Printed Name and Title: _____

E-Mail Address: _____

MAILING ADDRESSES

Purchase Order Address: (If different from above)

Name: _____

Address: _____

City, State and Zip Code: _____

Payment Address: (If different from above)

Name: _____

Address: _____

City, State and Zip Code: _____



8.5.

ACKNOWLEDGEMENT REGARDING LETTER IN GOOD STANDING

**BIKE LANES/ PEDESTRIAN IMPROVEMENTS – SCOTTSDALE ROAD FROM CURRY
ROAD TO CONTINENTAL DRIVE
PROJECT NO. 6009741
FEDERAL AID PROJECT NO. TMP-0(254)D
ADOT TRACS NO. 0000 MA TMP T0260 01C**

Signing this document acknowledges contractor’s understanding of the requirements outlined in the Invitation for Bid, Section 4.7 stating the following:

4.7. PRE-CONTRACT AWARD REQUIREMENTS

4.7.1 Contractor shall provide a copy of its written health and safety program and any required employee training records or certificates.

4.7.2 Taxes. All applicable taxes due and owing by Contractor and all subcontractors shall be considered by City in determining award. At all times, the determination of applicable taxes and rates, and remitting taxes owed, shall be the sole responsibility of Contractor.

It is the sole responsibility of the Contractor and any subcontractors to obtain a Letter of Good Standing from the Arizona Department of Revenue prior to Contract award. Go to <https://azdor.gov/forms/collections-forms/tax-clearance-application> and obtain directions regarding how to submit for the Letter of Good Standing. Submit a copy of the Letter of Good Standing to contractor_support@tempe.gov The Letter of Good Standing must have been issued within the last 90 days from the award date of the contract.

In the event a “denial” letter is received from the Arizona Department of Revenue, should any taxes owed by Contractor or any subcontractors not be remitted in full prior to Contract award along with the receipt of a Letter of Good Standing from Contractor and each subcontractor, the bid shall be considered non-responsive and rejected by the City.

I hereby acknowledge _____ (contractor/vendor) will be in compliance with section 4.7 at the time of a contract award.

Signature

Date

Print Name

Title

Company

8.6.

**CERTIFICATION BY CONTRACTOR AUTHORIZING
EMPLOYEES TO SIGN BINDING AGREEMENTS**

**BIKE LANES/ PEDESTRIAN IMPROVEMENTS – SCOTTSDALE ROAD FROM CURRY
ROAD TO CONTINENTAL DRIVE
PROJECT NO. 6009741
FEDERAL AID PROJECT NO. TMP-0(254)D
ADOT TRACS NO. 0000 MA TMP T0260 01C**

Contractor hereby certifies that the following employees in its organization are duly authorized to sign binding agreements necessary to carry out the terms of its contract(s) or amend the terms of its contract(s) on behalf of the Contractor, its owner(s), partner(s), and/or principal(s) of a corporation, or the manager(s) and/or member(s) of a limited liability company. Such agreements include, but are not limited to, pay requests, change orders, required certifications, etc.

In submitting this Certification, Contractor acknowledges this Certification is incorporated by reference into any active contract(s) between Contractor and the City and will be incorporated by reference into any future contract(s) between Contractor and the City. Contractor further acknowledges it understands the City will rely on the representations contained herein concerning authority to execute documents.

Type or Print Name

Signature

Contractor Name

Signed By

(Owner, Partner, or Principal of the Corporation)

Printed Name

Title

Date

8.7.

PERFORMANCE BOND FORM
(Bond Amount to Be Equal to 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That _____ (hereinafter called the Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), are held and firmly bound unto (hereinafter called the Obligee) in the amount of _____ Dollars (\$_____), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the / day of / 2025, to complete Project No. 6009741, Federal Aid Project No. TMP-0(254)D, ADOT Tracs No. 0000 MA TMP T0260 01C, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise, it remains in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of title 34, chapter 2, article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of title 34, chapter 2, article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

DATED this _____ day of _____ 2025.

PRINCIPAL

SEAL

By: _____

*SURETY

SEAL

By: _____

AGENCY ADDRESS

*Surety hereby acknowledges it holds a certificate of authority to transact surety business in the State of Arizona, issued by the director of the department of insurance pursuant to Title 20, Chapter 2, Article 1, Arizona Revised Statutes.

8.8.

PAYMENT BOND FORM

(Bond Amount to Be Equal to 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That _____ (hereinafter called the Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____(hereinafter called the Surety), are held and firmly bound unto (hereinafter called the Obligee) in the amount of _____ Dollars (\$_____), for the payment whereof the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the / day of / 2025, to complete Project No. 6009741, Federal Aid Project No. TMP-0(254)D, ADOT Tracs No. 0000 MA TMP T0260 01C, which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, the condition of this obligation is such, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the Contract, this obligation is void. Otherwise, it remains in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of title 34, chapter 2, article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of title 34, chapter 2, article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

DATED this _____ day of _____ 2025.

PRINCIPAL

SEAL

By: _____

*SURETY

SEAL

By: _____

AGENCY ADDRESS

*Surety hereby acknowledges it holds a certificate of authority to transact surety business in the State of Arizona, issued by the director of the department of insurance pursuant to Title 20, Chapter 2, Article 1, Arizona Revised Statutes.

8.9.

**CITY OF TEMPE PUBLIC WORKS DEPARTMENT
CONDITIONAL WAIVER AND RELEASE
FOR CONTRACTOR'S PAYMENT
AND SETTLEMENT OF CLAIMS**

The undersigned:

Contractor's Name: _____

Contractor's Address: _____

On receipt by the undersigned of a check from City of Tempe in the sum of \$_____ (dollar amount for final payment) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, the undersigned has on the job of the City of Tempe (Owner) for **BIKE LANES/ PEDESTRIAN IMPROVMEENTS – SCOTTSDALE ROAD FROM CURRY ROAD TO CONTINENTAL DRIVE** and **PROJECT NO. 6009741**. This release covers the final payment to the undersigned for all labor, services, equipment or materials furnished to the jobsite, except for disputed claims in the amount of \$_____. Before any recipient of this document relies on it, the person should verify evidence of payment to the undersigned.

The undersigned, in consideration of the payment acknowledged, hereby warrants that he has already paid or will pay using the monies received from this final payment to promptly pay in full all his contractors, subcontractors, laborers, materialmen and suppliers for all work, materials, equipment or services provided to the above-referenced project.

Contractor Signature

Date

By (Print Name and Title)

AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES

A.R.S. § 1-501 and § 1-502 require any individual person or sole proprietor who applies to the City for a local public benefit (including the award of a contract) to demonstrate his or her lawful presence in the United States. An individual person or sole proprietor who submits a bid for this contract must complete this Affidavit and submit it with the bid, along with a copy of one of the documents listed below.

ALL VIOLATIONS OF FEDERAL IMMIGRATION LAW SHALL BE REPORTED TO 1-866-347-2423

LAWFUL PRESENCE IN THE UNITED STATES CAN BE DEMONSTRATED BY PRESENTATION OF ONE (1) OF THE DOCUMENTS LISTED BELOW.

Please present the document indicated below to the City. If mailing the document, attach a copy of the document to this Affidavit. (If the document may not be copied, present the document in person to the City for review and signing of the affidavit.)

- _____ 1. An Arizona driver license issued after 1996.
Print first 4 numbers/letters from license: _____
- _____ 2. An Arizona non-operating identification License.
Print first 4 numbers/letters: _____
- _____ 3. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
Year of birth: _____: Place of birth: _____
- _____ 4. A United States Certificate of Birth abroad.
Year of birth: _____: Place of birth: _____
- _____ 5. A United States passport.
Print first 4 numbers/letters on Passport: _____
- _____ 6. A foreign passport with a United States Visa.
Print first 4 numbers/letters on Passport _____
Print first 4 numbers/letters on Visa _____
- _____ 7. An I-94 form with a photograph.
Print first 4 numbers on I-94: _____
- _____ 8. **A United States Citizenship and Immigration Services Employment Authorization Document (EAD).**
Print first 4 numbers/letters on EAD: _____
- _____ 9. **Refugee travel document.**
Date of Issuance: _____ Refugee Country: _____
- _____ 10. **A United States Certificate of Naturalization.**
Print first 4 digits of CIS Reg. No.: _____
- _____ 11. **A United States Certificate of Citizenship.**
Date of Issuance: _____ Place of Issuance: _____
- _____ 12. **A tribal Certificate of Indian Blood.**
Date of Issuance: _____ Name of Tribe: _____
- _____ 13. **A tribal or Bureau of Indian Affairs Affidavit of Birth.**
Year of Birth: _____ Place of Birth: _____

I DO SWEAR OR AFFIRM UNDER PENALTY OF LAW THAT I AM LAWFULLY PRESENT IN THE UNITED STATES AND THAT THE DOCUMENT I PRESENTED ABOVE AS VERIFICATION IS TRUE.

Signature

Business/Company (if applicable)

Print Name

Address

Date: _____

City, State, Zip Code

STATE OF ARIZONA
COUNTY OF MARICOPA

SUBSCRIBED AND SWORN to before me this _____ day of _____ 2025.

[Notary Seal]

Notary Public _____



8.11.

**COMPLIANCE WITH TEMPE CITY CODE
CHAPTER 2 ARTICLE VIII SECTION 2-603(5)**

Per Tempe City Code Chapter 2 Article VIII Section 2-603(5), it is unlawful for a City vendor or City contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment.

City vendors and contractors of fifteen (15) or more employees shall provide a copy of its antidiscrimination policy to the city’s procurement officer to confirm compliance with this article. Employers having fourteen (14) or less employees may attest in writing to compliance with this article.

- CONTRACTOR means any person who has a contract with the City.
- VENDOR means a person or firm in the business of selling or otherwise providing products, materials, or services.

CONTRACTOR/VENDOR, select one:

_____ Current copy of antidiscrimination policy attached.

OR

_____ I hereby certify _____ (contractor/vendor) to be in compliance with Tempe City Code Chapter 2 Article VIII Section 2-603(5).

Signature

Date: _____

Print Name

Title

Company



SUBCONTRACTOR REQUEST (Please check the appropriate box)

- Request for subcontract Acceptance
- Request for Lower Tier Subcontract Acceptance

It is the City's responsibility to ensure that prime contractors employ subcontractors in accordance with various Federal and State regulations. Please provide the information and appropriate signatures requested below **at/before the Pre-Construction Meeting**. Copies of subcontracts shall also be provided to the City. The subcontractor may not start work until this request is authorized by the City.

Project Name: _____ Date: _____

City Project No. _____ Fed. Project No. _____

Tracs. Number: _____

Prime Contractor: _____ Prime Phone: _____

Prime Contract Amount: _____ Prime AZ UTRACS No. _____

Permission is requested to sublet the following described work, being a portion of the above project to:

Subcontractor Information:

Subcontractor Company Name: _____

Mailing Address: _____

Main Phone No: _____ Fax Number: _____

Company Contact: _____ Email Address: _____

R.O.C. No.: _____ Class _____ Federal ID No. _____

Sub AZ UTRACS No. _____

The Subcontractor is: A Corporation, incorporated in the State of _____

A Proprietorship A Partnership An LLC Other: _____

Minority Status: None DBE MBE WBE

Lower Tier Subcontractor to: _____

Subcontractor Payroll Designee:

Name: _____ Phone Number: _____

Fax Number: _____ Email Address: _____

The designee is in a position to have full knowledge of: (a) the facts set forth in the Subcontractor's payroll documents; (b) the Statement of Compliance referred to in 29 C.F.R. 5.5(a)(3)(ii)(B), which the Appointee is to execute with each payroll report; and (c) the Copeland "Anti-Kickback" Act (18 U.S.C. § 874, as implemented and supplemented by 29 C.F.R. part 3).

Truck Owner-Operator Information:

I certify that I am a bona fide truck owner/operator

Signature Date

CERTIFICATION: The Prime Contractor and Subcontractor certify the following:

- A) The Subcontractor has received applicable Document Nos. 2-9 per Special Provisions.
- B) The Prime Contractor and Subcontractor will execute Document Nos. 1 and 2 prior to the start of Subcontractor's work. DBE subcontracts must be submitted at/before the Pre-Construction conference.
- C) Upon execution, Prime Contractor will provide the City Contract Administrator copies of Document Nos. 1 and 4.
 - 1. Subcontract Agreement containing the above Bid Items of Work.
 - 2. Standard Federal EEO, Executive Order 11246 Revised 04-15-81 (Federal Aid and Non-Federal Aid projects).
 - 3. Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246), April 15, 1981 (Fed. Aid and NFA).
 - 4. Certification, Contracts or Subcontracts subject to EEO clause April 1969 (Federal Aid Projects only).
 - 5. FHWA1273 (Rev. 5-12), initialed on each page by the Subcontractor. (Federal Aid Projects only).
 - 6. EEO Compliance Reports, Rev. August 24, 2016 (Federal Aid Projects only).
 - 7. Certification of Non-segregated Facilities, September 29, 1975 (Federal Aid Projects only).
 - 8. EPRISE Specifications (9/19/16) with or without goal.
 - 9. City of Tempe Title VI Assurances including Appendices A and E.
 - 10. LPA DBE Subcontract Compliance Assurances
 - 11. Wage Determination Decision #: _____ Mod #: _____ (As per contract documents for referenced project.)
 - 12. Cargo Preference Act
 - 13. Contractor and Subcontractor Records Retention Language. The contractor shall insert the below requirement in each subcontract, purchase order and lease agreement and shall also include in all subcontracts a clause requiring subcontractors to include the above requirement in any lower-tier subcontract, purchase order or lease agreement.

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

All of the above material shall be made available to the City of Tempe, ADOT and or FHWA for auditing, inspection and copying and shall be produced, upon request"

- 14. Language ensuring that the contractor, including all subcontractors, shall comply with all federal, state and local immigration laws and regulations, as set forth in Arizona Executive Order 2005-30, relating to the immigration status of their employees who perform services on the contract during the duration of the contract.

Authorized Prime Contractor Signature/Date	Authorized Subcontractor Signature/Date	Authorized Lower Tier Signature/Date
Printed Name	Printed Name	Printed Name
Title	Title	Title

FOR CITY USE ONLY

Verification of Sam.gov

Verification of all contract provisions

- Subcontract Agreement containing the above Bid Items of Work.
- Buy America Provisions
- Standard Federal EEO, Executive Order 11246 Revised 04-15-81
- Affirmative Action to Ensure Equal Employment Opportunity
- Certification, Contracts or Subcontracts subject to EEO clause April 1969
- FHWA1273 (Rev. 5-12), initialed on each page by the Subcontractor.
- EEO Compliance Reports, August 24, 2016
- Certification of Non-segregated Facilities, September 29, 1975
- EPRISE Specifications (9/19/16) with or without goal.
- City of Tempe - Title VI Assurances and Appendices A and E.
- LPA DBE Subcontract Compliance Assurances
- Wage Determination
- Cargo Preference Act
- Contractor and Subcontractor Records Retention Language (Standard Specifications 107.18)
- Language regarding applicable laws (Standard Specifications 107.19)

Verification of the DBE Calculations. Does the DBE commitment on this match what was provided in the bid documents?

Total Subcontracted To Date: \$ _____ Percentage Subcontracted To Date: _____ %
 Subcontract in Project File?: YES _____ NO _____

City of Tempe Contract Compliance Analyst _____ Date _____

CITY ENGINEERING SECURE FACILITIES ACCESS GUIDELINES

These guidelines are applicable to all contracts that call for work to be done in any of the City's secure facilities and are incorporated by reference into said contracts. Contractors should be advised that there are separate requirements for General Secure Facilities and Water Utilities Department Secure Facilities.

I. GENERAL SECURE FACILITIES ACCESS REQUIREMENTS

The Contractor and Third-Party Construction Manager shall provide the City with a 10-year background check for all employees, including subcontractors, working in any of the City's secure facilities which include, but are not limited to, the Tempe Transportation Center, East Valley Bus Operations and Maintenance Facility, Police Department/Courts Headquarters, and Police Department substations. Background checks shall be performed by an authorized company capable of conducting a nationwide search. Background checks shall include, at a minimum, information regarding state and national criminal and sexual offender information, and a 5-year driving record search. The Contractor and Third-Party Construction Manager shall be responsible for the cost of all their employee background checks. Below is a list of automatic and discretionary disqualifiers which may disqualify or make an individual ineligible to work at any of the City's secure facilities. The Contractor and Third-Party Construction Manager shall submit all employee background checks to the City of Tempe for review and authorization before the contractor employees or subcontractors are issued a Contractor Identification Badge and before being allowed to work at any of the City's secure facilities. All authorized contractor, subcontractor and third-party construction manager employees shall coordinate with the respective facility supervisor to obtain a contractor identification badge. Contractor and Third-Party Construction Manager employees must wear their contractor identification badge at-all-times while working at the City's secure facility.

AUTOMATIC DISQUALIFIERS

The following will disqualify any individual who has, at any time:

- Has known affiliations with gangs, gang members, terrorist groups and/or individuals,
- Outstanding felony warrants,
- Conviction for selling, producing, cultivating, or transporting marijuana for sale,
 - Conviction for producing, cultivating, or transporting any dangerous drugs or narcotics for sale.

DISCRETIONARY DISQUALIFIERS

The following may, upon review by the Tempe Police Department, make an individual ineligible to work in or around secure areas of City Facilities:

- Unlawful sexual misconduct;
- DUI conviction or suspension of your Arizona driver's license due to a DUI;
- Commission of a felony;
- Conviction of a felony or any offense that would be a felony if committed in Arizona;
- Outstanding misdemeanor warrants;
 - Any other conduct or offense that could jeopardize the safety of City employees or the public; or,
- Insufficient information.

II. WATER UTILITIES DEPARTMENT SECURE FACILITIES ACCESS REQUIREMENTS

The Contractor and Third-Party Construction Manager shall verify that a 10-year background check has been completed within the last 5 years for all employees, including subcontractors, working in any of the City's Water Utilities Department secure facilities which include, but are not limited to, the Johnny G. Martinez Water Treatment Plant, South Tempe Water Treatment Plant, and Kyrene Water Reclamation Facility. The background check shall include state and national criminal and sexual offender information as well as driving record information outlined in Secure Facility Access Requirements. Background checks shall be performed by an authorized company capable of conducting a nationwide search. Background checks shall include, at a minimum, information regarding state and national criminal and sexual offender information, and a 5-year driving record search. The Contractor and Third-Party Construction Manager shall be responsible for the cost of all their employee background checks.

Contractor and Third-Party Construction Manager shall disclose any knowledge of employee criminal history status involving the following:

- Any felony offense
- Any offense involving assault or threats of violence
- Any theft, fraud or financial crimes offense
- Any arson offense
- Any sexual misconduct offense
- Any offense of misconduct involving a deadly weapon

SECURE FACILITY VERIFICATION REQUIREMENTS

The Contractor and Third-Party Construction Manager shall verify that all employee background checks have been completed before the contractor employees or subcontractors are issued a Contractor Identification Badge and before being allowed to work at any of the City's Water Utilities Department secure facilities. All authorized contractor, subcontractor and third-party construction manager employees shall coordinate with the respective facility supervisor to obtain a contractor identification badge. Contractor and Third-Party Construction Manager employees must wear their contractor identification badge at-all-times while working at the City's secure facility.

8.14.

BIDDER'S LIST OF SUB-CONTRACTORS
BIKE LANES/ PEDESTRIAN IMPROVEMENTS – SCOTTSDALE ROAD FROM
CURRY ROAD TO CONTINENTAL DRIVE
PROJECT NO. 6009741
FEDERAL AID PROJECT NO. TMP-0(254)D
ADOT TRACS NO. 0000 MA TMP T0260 01C

MAG Specification 102.6 requires listing of all subcontractors with the bid for all subcontract work. Only one name shall be listed for each category. BIDDER proposes to subcontract certain portions of the work to the firms listed below:

Name _____
Location _____
ROC No./Exp. _____
ROC Classification _____
Federal ID No./Exp. _____
AZ UTRACS No./Exp. _____
Type of Work _____
Amount \$ _____

Name _____
Location _____
ROC No./Exp. _____
ROC Classification _____
Federal ID No./Exp. _____
AZ UTRACS No./Exp. _____
Type of Work _____
Amount \$ _____

Name _____
Location _____
ROC No./Exp. _____
ROC Classification _____
Federal ID No./Exp. _____
AZ UTRACS No./Exp. _____
Type of Work _____
Amount \$ _____

Name _____
Location _____
ROC No./Exp. _____
ROC Classification _____
Federal ID No./Exp. _____
AZ UTRACS No./Exp. _____
Type of Work _____
Amount \$ _____

Name _____
Location _____
ROC No./Exp. _____
ROC Classification _____
Federal ID No./Exp. _____
AZ UTRACS No./Exp. _____
Type of Work _____
Amount \$ _____

Name _____
Location _____
ROC No./Exp. _____
ROC Classification _____
Federal ID No./Exp. _____
AZ UTRACS No./Exp. _____
Type of Work _____
Amount \$ _____