CITY OF PHOENIX
Real Estate Division

REQUEST FOR PROPOSALS
RFP 16-001 (TMS)

PROPERTY MANAGEMENT SERVICES
REQUIREMENTS CONTRACT FOR
PROFESSIONAL SERVICES

PRE-PROPOSAL CONFERENCE
January 15, 2016 1:30 P.M., Local Arizona Time

DEADLINE FOR RECEIVING PROPOSAL
February 16, 2016 12:00 P.M., Local Arizona Time
City of Phoenix Finance Department
Real Estate Division
251 W. Washington Street, 8th Floor
Phoenix, AZ 85003

CONTACT PERSON
Tamara Shapero
Project Management Assistant
602-495-7835
tamara.shapero@phoenix.gov
SECTION I – INSTRUCTIONS TO PROPOSERS

CITY OF PHOENIX
Real Estate Division
251 W. Washington Street
8th Floor
Phoenix, AZ 85003
Phone: (602) 495-7835

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Please read this before continuing on to the proposal document.

SOLICITATION RESPONSE CHECK LIST

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

☐ 1. All forms have been signed, including the Offer page in Section VI, Offer and Acceptance, as well as Attachments I, II, III, of Exhibit A, FederalClauses. All of Section VII, Submittals, is included. Proposer has fulfilled the requirements of Attachment IV, Disadvantaged Business Enterprise (DBE) Program and its Attachments A, B-1, and B-2.

☐ 2. The prices offered have been reviewed.

☐ 3. Review the insurance requirements, if any, to assure you are in compliance.

☐ 4. The specified number of copies of your proposal has been included.

☐ 5. Any items requested in Section III, Evaluation Criteria, have been included.

☐ 6. Any addenda have been signed and are included.

☐ 7. The mailing envelope has been addressed to:
   City of Phoenix, Real Estate, 8th Floor, 251 W. Washington Street, Phoenix, AZ 85003.

   The mailing envelope clearly shows:
   Your company name and address, the solicitation number, and the proposal opening date.

☐ 8. The response will be mailed in time to be received no later than the Proposal Due Date specified in the Section I - Schedule of Events.
1. INTRODUCTION

The City of Phoenix through its Finance Department (the “City”) is issuing this request for proposals (“RFP”) from firms experienced in providing commercial property management services.

The City anticipates that any contract resulting from this RFP will have a two year term, commencing on or about April 16, 2016. Submission of a proposal in response to this RFP is an offer to contract with the City based upon the terms, conditions, and specifications contained herein. This RFP will only become a contract if a proposer signs and submits the Offer and Acceptance and the Submittal Sections of this RFP (Sections VI and VII herein), and the Deputy Finance Director accepts the proposal on behalf of the City by executing this RFP on the Offer and Acceptance page.

2. OBTAINING THE RFP

Interested proposers may download the complete RFP from http://www.phoenix.gov/solicitations. Internet access is available at all public libraries. This RFP also is available in large print, Braille, audio tape, or computer diskette. Please call (602) 495-7835/Fax (602) 261-8919 or TTY (602) 534-5500 for assistance.

3. ADDENDA

The City will not be responsible for any oral instructions made by any employees or officers of the City regarding this RFP. Any changes or revisions to this RFP will be in the form of a written addendum, which will be available at http://www.phoenix.gov/solicitations or by calling (602) 495-7835. The proposer must acknowledge receipt of each addendum by signing and returning the document with the proposal submittal.

4. CONTACT PERSON

It is the responsibility of all proposers to examine the entire RFP and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a proposal. All questions regarding this RFP shall be directed to the contact person set forth below (the “Contact Person”):

Tamara Shapero
Project Management Assistant
602-495-7835
tamara.shapero@phoenix.gov

5. MINIMUM REQUIREMENTS

A proposer must satisfy the following minimum requirements (collectively, the “Minimum Requirements”) in order for its proposal to be considered by the Evaluation Panel (as provided in Section III herein). Proposers are reminded that the qualifications and other requirements stated in this RFP are minimum requirements and that proposals submitted must be for services that meet or exceed the minimum standards described in this RFP.
SECTION I – INSTRUCTIONS TO PROPOSERS

5.1 Proposer must have a minimum of five (5) years of commercial property management experience in Arizona as described in the Scope of Work (Section II). All persons who will assist the proposer under any contract resulting from this RFP must be fully qualified to carry out their duties.

5.2 Proposer has submitted an executed Offer in the form attached in Section VI. Proposer must agree that its proposal continues to be valid and irrevocable for 120 calendar days after the proposal due date.

5.3 If required by law for the services required by this RFP, proposer must possess all valid certifications and/or licenses as required by federal, state and local laws at the time of submittal.

5.4 In order to do business with the City, each proposer must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Consultant will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

5.5 Proposer has submitted an executed Debarment Certificate in the form attached as Exhibit A-Attachment I, which has been executed by an authorized representative of proposer.

5.6 Proposer has submitted an executed Certification Regarding Lobbying in the form attached as Exhibit A-Attachment II, which has been executed by an authorized representative of proposer.

5.7 Proposer has submitted an executed Free Competitive Proposing Affidavit in the form attached as Exhibit A-Attachment III, which has been executed by an authorized representative of proposer.

5.8 Proposer has met all requirements prescribed in Disadvantaged Business Enterprise (DBE) Program in the materials attached as Exhibit A - Attachment IV and its Attachments A, B-1, and B-2.

6. SOLICITATION TRANSPARENCY POLICY:

6.1 Beginning on the date this RFP is issued and until the date any contract resulting from this RFP is awarded or this RFP is withdrawn, all proposers that respond to this RFP, including their employees, agents, representatives, proposed partner(s), subcontractor(s), joint venture(s), member(s), or any of their lobbyists or attorneys (collectively, the “proposer”) will refrain, from any direct or indirect contact with any person (other than the designated contracting officer) who may play a part in the selection process, including members of the Evaluation Panel (as defined in Section III), the City Manager, Assistant City Manager, Deputy City Managers, Department heads, the Mayor and other members of the Phoenix City Council. As long as the RFP is not discussed, proposers may continue to conduct business with the City and discuss business that is unrelated to this RFP with the City staff.

6.2 Proposers may discuss their proposal or this RFP with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through Project Management Assistant Tamara Shapero, conducted in person at 200 West
WASHINGTON, Phoenix, Arizona 85003, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

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

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

7. PREPARATION OF PROPOSAL

7.1 All forms provided in Section VII, Submittals, and Attachments I and II to Exhibit “A” must be completed and submitted with your proposal. All proposals must be completed in ink or typewritten and include the number of copies indicated in subsection 7.2 below. Proposer may photocopy the forms of Submittals (Section VII) if additional space is required. Erasures, interlineations, or other modifications of proposals must be initialed in original ink by the authorized person signing the proposal. No proposal may be altered, amended or withdrawn after the specified proposal due time and date. The City is not responsible for proposer’s errors or omissions.

7.2 Proposers must submit one original and five copies of the Submittal (Section VII) and the Offer and Acceptance (Section VI). **Please submit only Sections VII and VIII along with the other documentation required; do not submit a copy of the entire RFP.**

7.3 Each proposer must provide sufficient documentation to evidence proposer satisfies the Minimum Requirements, and include the following:

A. A description of proposer’s approach to completing the Scope of Work (Section II herein) in a manner that demonstrates proposer’s experience and knowledge about the requirements in the Scope of Work and applicable law.

B. An organizational chart for proposer.

C. Résumés demonstrating the qualifications and experience of all staff proposer would assign to work under the contract resulting from this RFP.

D. A list of at least three references for whom the proposer is currently providing or within the last five years has provided Property Management Services similar to the services described in the Scope of Work, including the following contact information: the name of the firm or governmental entity, its address, a contact person and telephone number. (City employees may not be used as reference.)

E. A brief summary of the proposer’s current workload, capacity to complete the services described in the Scope of Work as required by the City.
F. A description of any geographic area of expertise.

G. All addenda issued by the City in connection with this RFP, acknowledged by proposer by signing and dating each addendum in the designated area.

8. SUBMISSION OF PROPOSAL

Proposals must be submitted and in the actual possession of the Real Estate Division of the City on or prior to the exact time and date indicated in the Schedule of Events at the following location:

PROPOSAL SUBMITTAL LOCATION:

Calvin Goode Building
City of Phoenix Finance Department
Real Estate Division
251 W. Washington Street, 8th Floor
Phoenix, AZ 85003

The City will not consider late proposals. The prevailing clock shall be the City Finance Department, Real Estate Division’s clock. Proposals must be submitted at the above location in a sealed envelope and the following information should be noted on the outside of the envelope:

Proposer’s Name
Proposer’s Address (as shown on the Certification Page)
RFP Number
RFP Title

9. SCHEDULE OF EVENTS

<table>
<thead>
<tr>
<th>Event</th>
<th>Date/Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposal Issue Date</td>
<td>January 8, 2016</td>
</tr>
<tr>
<td>Pre-Proposal Conference</td>
<td>January 15, 2016 1:30 P.M. Local Arizona Time</td>
</tr>
<tr>
<td>Written Inquiries Due Date</td>
<td>January 25, 2016 5:00 P.M. Local Arizona Time</td>
</tr>
<tr>
<td>Proposal Due Date</td>
<td>February 16, 2016 12:00 P.M. Local Arizona Time</td>
</tr>
<tr>
<td>Evaluation Panel Meets</td>
<td>February 23, 2016</td>
</tr>
<tr>
<td>City Council Approval</td>
<td>March 23, 2016</td>
</tr>
</tbody>
</table>

The City reserves the right to change dates and/or locations as necessary.
10. PRE-PROPOSAL CONFERENCE

The Pre-Proposal conference will take place at the following location:

Calvin Goode Building
City of Phoenix Finance Department
Conference Room 910
251 W. Washington Street, 9th Floor
Phoenix, AZ 85003

11. TERMS AND CONDITIONS APPLICABLE TO ALL PROPOSERS

11.1 Negligence in preparing a proposal confers no right of withdrawal after due date and time. Proposers are strongly encouraged to:

A. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services required in the Scope of Work (Section II).

B. Study and carefully correlate proposer’s knowledge and observations with this RFP and other related data.

C. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which proposer has discovered in or between this RFP document and other related documents.

11.2 The City does not reimburse the cost of developing, presenting or providing any response to this RFP. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The proposer is responsible for all costs incurred in responding to this RFP. All materials and documents submitted in response to this RFP become the property of the City and will not be returned.

11.3 The City reserves the right to disqualify any proposer on the basis of any real or apparent conflict of interest that is disclosed by the proposal submitted or any other data available to the City. Such disqualification is in the sole discretion of the City. Any proposer submitting a proposal herein waives its rights to object now or at any future time, before any body or agency, including but not limited to, the City Council or any court.

11.4 At any time prior to the deadline for submission of proposals under this RFP, a proposer (or its designated representative) may withdraw the proposal by submitting a request in writing by personal delivery or mail and signed by a duly authorized representative. Facsimiles, telegraphic, mailgram or email withdrawals will not be considered.

11.5 Proposals will be opened on the proposal due date, time and location indicated in Schedule of Events above at which time the name of each proposer will be read. Proposals and other information received in response to this RFP will be shown only to authorized City personnel having a legitimate interest in the information or persons.
11.6 For the purposes of determining the lowest cost, the City will not take tax into consideration. Taxes must be listed as a separate item on proposer’s submittal and the City will reimburse the proposer for the applicable state and local taxes. Proposer acknowledges that such reimbursement by the City does not change the proposer’s obligation to pay taxes. The City is merely agreeing to pay such amount as part of the contracted price.

11.7 All proposals submitted in response to this RFP are the property of the City and will become a matter of public record available for review pursuant to Arizona State law.

11.8 In the event the City receives only one response to this RFP, the City may require that the proposer submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the proposal price is fair and reasonable.

12. PROTEST PROCEDURES

Recommendations by the Evaluation Panel as defined in Section III herein to award the contract(s) to a particular proposer will be posted: at: www.phoenix.gov/solicitations. Any unsuccessful proposer may file a protest of the recommendation no later than 7 calendar days after the recommendation is posted on the website. All protests must be in writing, filed with the Deputy Finance Director in charge of Real Estate and include the following:

- Identification of the RFP number;
- The name, address and telephone number of the protester;
- A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- The form of relief requested; and
- The signature of the protester or its authorized representative.

13. SOLICITATION NOTICE

To receive any future notifications regarding this solicitation, companies and/or individuals must register with the City’s Vendor Management System (http://bizopps.phoenix.gov) and select the following code:

A. 958780000 – Management Services – Property Management Services

14. VENDOR SELF REGISTRATION

Any Offeror that is recommended for contract award resulting from this solicitation must be registered in the City’s on-line Vendor Management System (VMS) prior to issuance of a contract award or purchase order. Access to the VMS for registration purposes is available at http://bizopps.phoenix.gov. The City may, at its sole discretion, reject any offer from an Offeror who has not registered in VMS within three (3) business day following award notice.
1. SCOPE OF WORK

The City of Phoenix Finance Department seeks proposals for Property Management Services for Village Shopping Center (VSC), a City-owned multi-use shopping center located at 1945 and 1957 West Dunlap Avenue, Phoenix, Arizona, 85033. The City anticipates contracting with one company for these services.

The subject property is owned by the Public Transit Department. The property consists of two detached buildings with a combined 32,290 square feet of commercial space which is divided into thirteen (13) units. Nine of the units are currently occupied. Rents are collected monthly.

The property has a surface parking lot consisting of 131 parking spaces, including the minimum number of handicapped parking spaces.

Any contractor selected under this RFP process, may be contacted to assist the City in satisfying its responsibilities under federal, state and local laws, policies and procedures, rules and regulations, in connection with the management of property for City programs. Such assistance shall include, but is not limited to, the tasks described below.

1.1 PROPERTY MANAGEMENT SERVICES

- VSC operations
- Preventive maintenance
- Vendor and contract management
- Facilities related purchasing
- Safety, emergency preparedness, and disaster recovery plans / support
- Inspections / regulatory compliance / environmental assessments
- Energy management / utilities
- Lease administration
- Financial administration and tenant relations
- Accounting
- Cost management and budgeting (operating and capital)
- Common Area Maintenance Calculation and billing
- Comprehensive Operational Reporting

1.2 MARKETING AND LEASING SERVICES

- Marketing and leasing of vacant space
2. GENERAL SCOPE OF SERVICES

2.1 PARKING MANAGEMENT
Property Manager shall be responsible for operating and maintaining the parking facilities located on the property.

2.2 BUILDING MANAGEMENT
The VSC is owned by the City of Phoenix Public Transit Department. Currently there are 9 tenants. Rent shall be collected by the Property Manager on a monthly basis from the tenants and deposited into accounts conforming to and managed in accordance with City requirements.

2.3 RECORD KEEPING
Property Manager shall maintain accurate books of account and records of transactions relating to the property as are customarily maintained by managers of similar properties and as may be reasonably required by the City. The City reserves the right to inspect or audit any records at any time with or without notice.

2.4 REPORTS
Property Manager shall provide to the City the following reports, records and documents relating to the Property:

<table>
<thead>
<tr>
<th>Report Name</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Report</td>
<td>Monthly</td>
</tr>
<tr>
<td>Preventive Maintenance Matrix</td>
<td>Annually</td>
</tr>
<tr>
<td>Vendor Schedule</td>
<td>Annually</td>
</tr>
<tr>
<td>VSC Inspection Report</td>
<td>Annually</td>
</tr>
<tr>
<td>Facilities Maintenance Plan</td>
<td>Annually</td>
</tr>
<tr>
<td>Facilities Emergency Plan</td>
<td>Annually</td>
</tr>
<tr>
<td>Marketing Plan</td>
<td>Annually</td>
</tr>
</tbody>
</table>

Additional reports may be requested by the City.

2.5 BUDGET
Property Manager shall prepare, and have approved by the City, an annual budget. Unless otherwise authorized in writing, Property Manager shall conduct its responsibilities within the approved budget.

2.6 COLLECTION AND DEPOSIT OF FUNDS
Property Manager shall take all action reasonably required to collect rents, utility payments and other funds payable under tenants leases on their respective due dates.

2.7 LEASE ENFORCEMENT
Property Manager shall, with the City’s written approval, terminate tenancies by signing and serving such notices and taking such actions as are deemed appropriate and necessary.

2.8 REPAIR AND MAINTENANCE
Property Manager shall arrange to maintain in a good state of repair all structural portions of the walls, roof, floors and foundations. S/he shall arrange for and supervise all repairs,
replacements, alterations, additions, improvements and maintenance that are included in the approved budget.

2.9 COMPETITIVE BIDS
Except for vendors with a current service contract or, in the event of an emergency, as specifically authorized by the City of Phoenix, Property Manager shall obtain at least three (3) quotations from qualified suppliers and/or contractors for services up to $5,000. Any services exceeding $5,000 will be contracted for in compliance with City rules and regulations.

2.10 CUSTOMARY SERVICES
Property Manager shall provide, by contract or otherwise, all customary services including but not limited to, parking management, landscaping services, security services, pest control, emergency generator maintenance, etc.

2.11 GOVERNMENTAL NOTICES
Property Manager shall notify the City of any notices from governmental agencies within twenty-four (24) hours of receipt.

2.12 CONTRACTOR EMPLOYEES
Property Manager shall employ, or cause an entity under its control to employ, such staff as necessary to fulfill its duties. Property Management firm shall assign a Manager to the Village Shopping Center at a level and capability sufficient to oversee its functions and employees.

A. The principal function of the Manager assigned to this property will be to oversee employees of the Property Management firm and vendors; and to monitor operational activities associated with this Scope of Work.

B. The Manager assigned to this property will work cooperatively with the City in matters of assuring service quality, providing operational data, responding to comments from tenants and responding to specific requests for other assistance as the need arises.

C. The City reserves the right to review the qualifications of the Property Manager assigned to the VSC, and may request the removal of the Property Manager at its discretion at any time during the duration of the contract.

D. Should the Property Manager be unavailable to perform his/her duties, the Property Management firm will appoint a staff member temporarily to serve in his/her place. Property Manager will notify the City’s Property Management Supervisor whenever such substitution will occur, prior to the event. If the Property Manager will be unavailable for more than two (2) weeks, Property Management firm will be required to provide a qualified Property Manager as a substitute, subject to City approval.

2.13 OFFICE
Property Manager shall maintain an office in the Phoenix metropolitan area.

2.14 MEETINGS
Property Manager or his/her designee will serve as the City’s representative and will attend tenant or community meetings at City’s request.
2.15 INTERIOR CLEANING
Property Manager will ensure that vacant units are maintained in broom clean condition.

2.16 PEST CONTROL
Preventive pest control service will be provided by the Property Manager to maintain a pest free environment.

2.17 LANDSCAPING AND IRRIGATION
Landscaping service will be provided as required. All trees and shrubs will be pruned as necessary to promote healthy growth and to maintain appropriate appearance.

Existing irrigation systems will be maintained to provide proper operation.

2.18 SIGNAGE
A. VSC Exterior/Monument Signs
   Exterior signs shall be properly maintained, including the replacement of lamps, as necessary. Directional signs will be provided as necessary to ensure proper traffic flow. These shall be cleaned annually and maintained free of damage.

2.19 ELECTRICAL
A. Electrical Systems
   Electrical systems shall be inspected annually to ensure their safety and reliability. A comprehensive preventative maintenance program shall be established for all electrical system components. Where auxiliary power systems (APS), uninterruptible power systems (UPS), power conditioners and other specialized electrical systems exist, special operations and maintenance programs will be established to maximize their reliability.

B. Exterior Lighting
   Proper exterior lighting is essential to the safety of our tenants and the public. Exterior lighting will be replaced within twenty four (24) hours of any failure.

2.20 PLUMBING SYSTEMS
All water and natural gas piping, sanitary sewers, rain leaders, and other plumbing fixtures commonly serving the entire Center will be maintained to ensure proper operation and a leak free condition.

2.21 SAFETY AND SECURITY REQUIREMENTS
A. Fire Sprinklers & Fire Extinguishers
   Fire Sprinkler Systems shall be inspected and pumps test operated at least annually or in accordance with local codes to ensure their reliability. Fire Extinguishers will be inspected annually and recharged as necessary. Fire hoses shall be inspected annually and replaced as needed or every five (5) years.

B. Fire Alarm Systems Maintenance
   To the extent that common area systems exist. All fire alarm systems and components, including panels, enunciators, smoke and heat detectors will be inspected and tested semi-annually. A comprehensive preventative maintenance program shall be established for all fire alarm system components.
C. Security Guard Services
Property Manager will manage security guard services as directed by the City.

D. Environmental Assessment & Testing
The City is committed to maintaining a safe, healthy and hazard free environment for its employees and tenants. Property Manager should identify any suspected environmental concerns. A specialist will be utilized when necessary for testing, evaluation, and corrective action. Property Manager will communicate as appropriate with CITY management regarding the results of any testing or environmental assessments.

2.22 EXTERIOR BUILDING REPAIRS
A. Roof Inspection/Repairs
The building roofs will be inspected annually to determine any preventive maintenance requirements. A roofing consultant may perform this inspection. Debris shall be removed from roof drains and gutters as required. If occasional leaks occur, a roofing contractor will be dispatched to inspect and repair the roof during the leak occurrence. If a roof leak requires more than two repairs, a roofing consultant will inspect the roof to make recommendations for its repair or replacement. A comprehensive preventive maintenance program shall be established for all roofs.

B. Building Repairs
Property Manager will work with both City and Non-City suppliers to maintain and repair the existing building structures and components, as required.

2.23 PAINTING
Exterior Painting
The building’s exterior facade will be maintained in a clean and attractive appearance. Painted surfaces will be repainted on a pre-scheduled basis or as directed by the City.

2.24 UTILITIES
Property Manager shall manage common area utility services (electricity, gas, water, and sewer) and the payment of the associated utility invoices.

2.25 PROPERTY INSPECTION
A. Annual Inspection (Condition Assessment)
Property Manager will conduct an annual detailed inspection of the PROPERTY. This inspection will review the overall quality for each service provided to the facility, evaluate the operating procedures, and identify capital improvements necessary to maintain and enhance the center’s appearance, function and operating efficiency. This inspection will be the basis for establishing any changes in service levels, operating budgets and capital expenditures for the following year. Operating and service deficiencies will be corrected in a timely manner. These inspections will be reviewed by the City to ensure that customer service expectations are being met or exceeded. THE PROPERTY MANAGEMENT FIRM IS RESPONSIBLE FOR ENSURING THIS PROPERTY MEETS 100% CODE COMPLIANCE.

B. ADA Inspections
As a part of the annual inspection, a review of the property’s compliance with the Americans with Disabilities Act (ADA) shall be performed. The Property Manager...
shall conduct Inspections to identify any existing barriers and develop plans for their removal.

2.26 LEASE ADMINISTRATION
The Property Manager will provide complete lease administration services, including but not limited to: a database of all specific lease information; all rental collection responsibilities; calculation, invoicing, and payment of common area maintenance charges, real estate taxes and service expenses associated with the maintenance of subleased tenant spaces; and the necessary software to effectively control all aspects of lease administration responsibilities and associated reporting.

Property Manager will inspect leased premises to identify items requiring maintenance and supervise operation according to the City's objectives. Where required, the Property Manager will act as a liaison between the City and tenants, providing services such as signage, monitoring the distribution of keys, and monitoring parking rules and regulations. Property Manager will ensure that all tenants comply with permitting requirements for tenant improvements, that a certificate of occupancy and certificate of insurance is provided prior to releasing keys to tenant, and that all certificates of insurance are current. Property Manager will negotiate charges for services not covered in the lease with the tenant in an equitable and cost effective manner.

2.27 MARKETING
Property Manager shall effectively market all vacant space in VSC. It is the City's objective to have the Center 100% leased at all times. City shall approve the content and budget for any print or broadcast advertising in writing in advance. Only those marketing costs outlined in the annual marketing plan or otherwise approved in writing by the City shall be reimbursed.

2.28 TAXES
Property Manager is responsible for payment and collection of any taxes or special assessments for the VSC including Government Property Lease Excise Tax and reflecting these correctly in the reconciliation and CAM charges.

2.29 ENVIRONMENTALLY PREFERRED PRODUCTS
The City has adopted a pollution prevention (P2) policy to provide sound environmental stewardship, protect human health, reduce operating expenses associated with the use of hazardous materials, and reduce potential liability to the City. The policy reflects the City's environmentally preferable purchasing (EPP) initiative. “Environmentally preferred” means products or services that a have a lesser or reduces effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison considers the potential employee health and environmental effects of a product, as well as special funding requirements, and disposal costs.

The products that are selected for use in this Contract should avoid physical and health hazards. Contractors are encouraged to use the chemical product material safety data sheets (MSDS) provided by manufacturers to make this determination. Acceptable products shall adhere to the following criteria and apply to all chemicals used for this contract:
SECTION II – SCOPE OF WORK

- Chemical constituents not listed as SARA Title III, Section 313 chemicals
- Chemicals with less than 0.5 percent phosphorous-containing constituents
- Corrosivity (pH) greater than 2 and less than 12.5
- Flashpoint greater than 150 degrees F
- No carcinogenic, mutagenic, or teratogenic constituents

The City maintains the right to request that the Contractor supply certification of compliance from the manufacturer information on the amount of VOCs contained in a product can be obtained from the product manufacturer and, in some cases, may be found under “Physical/Chemical Characteristics” (typically Section III) of the MSDS.

All products must be delivered in a non-aerosol formulation such as ready-to-use pump action sprays, air-charged refillable containers, or concentrates that can be dispensed into spray bottles for use. Aerosol sprays typically emit more VOC’s and contribute to ozone air pollution.

2.30 HAZARDOUS MATERIALS REQUIREMENTS - MSDS
Contractor shall provide a copy of the current Material Safety Data Sheet (MSDS) for the product(s) offered. The MSDS must include all chemical compounds present in concentrations greater than 0.1% for each product offered. Contractor shall provide required safety and health training for City employees on each product offered and for proper product use, storage, and disposal, when requested by the City. Contractor further agrees to accept returned empty containers for disposal purposes, if and when requested by the City. The cost for any requested training and disposal of used containers shall be included in the proposal price for the product. Contractor shall also accept returned product that was purchased as a result of this RFP and for which the City no longer needs the product. Returned product will be in its original container(s), unopened, and must be returned at least forty-five (45) calendar days prior to any shelf-life expiration date noted on the product container(s).

All product containers provided should exhibit the Hazardous Material Identification System (HMIS) and/or the National Fire Protection Association (NFPA) labels/ratings on the containers.

The City reserves the right to purchase the product that in the City’s opinion is the least hazardous material suitable for use in the City’s operations, price notwithstanding.

2.31 OSHA LAWS AND REGULATIONS
A. Emergency Spill Response Plan
Contractor shall determine whether products selected could require an emergency spill response plan for any hazardous material used. If such determination is made, a plan for directing employees in proper response procedures must be submitted. At a minimum, the response plan must address the following minimum information:
1. Provide a description of equipment on site available to contain and/or respond to an emergency/spill of the material.
2. Notification procedures.
3. Response coordination procedures between Contractor and the City of Phoenix.
4. Provide a Site Plan showing the location of stored hazardous materials and location of spill containment/response equipment.
5. Provide a description of the training provided to the Contractor's employees.

B. Hazardous Materials Storage and Labeling Specifications
Contractor shall, to the satisfaction of the City's environmental representative, properly and safely store all hazardous materials, which shall include as a minimum, the following:

1. Have a designated storage site for hazardous material, which includes secondary containment.
2. Provide signage approved by the City’s environmental representative clearly identifying the hazardous materials storage site. Signage must be in language understood by Contractor's on-site employees.
3. All hazardous materials containers must be labeled according to OSHA requirements, and bear applicable NFPA or HMIS labels.

C. Regulatory Compliance
Contractor shall comply with all applicable Federal, State, City, and local laws, regulations and rules, including, but not limited to:

OSHA Guideline Compliance
1. Material Safety Data Sheets
Contractor shall furnish to the City’s Public Transit Department copies of Material Safety Data Sheets (MSDS), for all products used, prior to beginning service in any facility. Contractor must update copies of the MSDS on an annual basis. In addition, each time a new chemical or cleaning product is introduced into any facility, a copy of that product’s MSDS must be provided to the City's Public Transit Department prior to the product being used in any facility. The Materials Safety Data Sheets must be in compliance with OSHA Regulation 1910.1200, paragraph g.

2. Labeling of Hazardous Materials
Contractor shall comply with the OSHA Regulation 1910.1200 paragraph f, concerning the labeling of all chemical containers.

3. Caution Signs
Contractor shall use caution signs as required by OSHA Regulation 1910.144 and 1910.145 at no cost to the City. Caution signs must be on-site during each scheduled cleaning.

4. OSHA Guidelines Blood Borne Pathogens
Contractor shall comply with OSHA Standard 29CFR 1910.1030 Blood Borne Pathogens as it pertains to the training, safety, and equipment needed for all employees engaged in contracted service. Contractor shall be responsible for compliance on date of Contract acceptance and shall provide proof to the Public Transit Department.

5. Hazard Communication
Proof of compliance with OSHA regulation 1910.1200, Hazard Communication, shall be provided to the Public Transit Department upon commencement of this Contract, and reviewed by the Public Transit Department Safety Analyst for verification.

6. **Failure to Comply**
   Failure of the Contractor or their employees to comply with all applicable laws and rules shall permit the City to immediately terminate resultant Contract without liability.

7. **Material Safety Data Sheets Notebooks**
   Contractor shall maintain on the site a notebook containing current (dated within the past three years or verified as most current by manufacturer) Material Safety Data Sheets (MSDS) for all materials being used on Site, whether or not they are defined as a Hazardous Material. The notebook shall be kept in the Contractor’s on-site storage area. The notebook must be kept up-to-date as materials are brought onto and removed from the site. A complete copy of the MSDS notebook shall also be provided to the City. New products must be approved for use by the City by providing a copy of the product’s MSDS for review and approval.

D. **Non Hazardous Materials Labeling Specifications**
   Contractor shall clearly label all packaged products, whether or not they are classified as Hazardous Materials under this Section. If any such unlabeled containers are discovered on the Site, the City’s environmental representative will notify the Contractor and Contractor will within one hour clearly label the container or remove it from the Site. Any containers that are filled from larger containers must also be labeled.

E. **Offsite Storage of Hazardous Materials**
   The City encourages storage of hazardous materials off site until the materials are needed on site. Solvent based strippers and cleaners will NOT be stored on City property.

F. **Hazardous Materials Management Program Documentation**
   Contractor shall make all required documentation available immediately upon request of the City's environmental representative. Contractor shall also provide the City’s environmental representative with copies of all permits obtained from environmental regulatory agencies.

G. **Contractor Training Requirements**
   Contractor shall provide requested copies of the company’s written Hazardous Communications Program to the City that satisfies requirements listed under sections e., f., g., and h. of 29 CFR 1910.1200, Hazard Communications.

   Contractor must demonstrate how employees are trained in the proper use, storage, and disposal of chemical products and wastes in a language understood by the Contractor’s on-site employees.

2.32 **AUTHORIZED PESTICIDES**
   Pest control shall be managed through prevention; physical and mechanical methods, and with pesticides only when necessary. Contractors will use the least toxic pest control
substance required to be effective.

Contractor shall submit for approval a list of chemical pesticides the Contractor will be applying by trade name, EPA registration number and category (includes herbicides, insecticides, rodenticides, etc.) and label signal word (i.e. caution, warning, or danger) and shall provide the same information prior to using any other product not originally submitted and approved by the City for use prior during the term. Pesticides must be EPA-registered (or exempt from registration under section 25b of FIFRA) at the time of submittal. All products must be applied in strict compliance with the most current labeling restrictions and/or consistent with most current EPA-approved application use at the time of application.

2.33 CAPITAL IMPROVEMENTS

Property Manager shall oversee capital improvement projects as requested by City.
1. EVALUATION CRITERIA

Proposals that meet the Minimum Requirements set forth in Section I of this RFP will be evaluated by an evaluation panel of at least three evaluators (collectively, the “Evaluation Panel”). The Evaluation Panel may include outside professionals or professionals from other City departments who can provide additional expertise.

A. Each member of the Evaluation Panel will evaluate proposals submitted in response to this RFP based upon a possible 1000 points. Scores be averaged to ascertain the Proposers’ final scores. Points are apportioned as follows:

- 300 pts. Commercial property management and leasing experience within the state of Arizona for each staff member to be assigned work under any contract resulting from this RFP.
- 300 pts. Proposer’s demonstrated ability to provide all services described in Section II hereof, including the capacity and necessary resources to fulfill the Scope of Work including all reporting requirements.
- 250 pts. Overall responsiveness to the requirements outlined in this RFP.
- 150 pts. Proposed rates and additional fees associated with any contract resulting from this RFP as identified in the Section VII Submittals.

B. The City reserves the right to request supplemental information that the Evaluation Panel deems necessary to complete the evaluation process. The City also may confirm any information provided in a proposals submittal. In addition, the Evaluation Panel may request a formal presentation from the highest ranked proposers before a final recommendation is made.

2. AWARD RECOMMENDATIONS

The Evaluation Panel will make award recommendations to the City Council. Contracts resulting from this RFP will not be effective unless and until approved by the City Council and executed by the Deputy Finance Director.
1. CONTRACT

If a contract results from this RFP, the Standard Terms and Conditions in this Section IV, the Insurance and Indemnification in Section V, the Scope of Work in Section II, the Offer and Acceptance in Section VI, the Submittals in Section VII and the provisions attached hereto as Exhibit “A” will be deemed to be binding upon the parties and constitute the contract resulting from this RFP. In the event the program or project is federally funded and any provision of Exhibit “A” is applicable, if the applicable provisions of Exhibit “A” conflict with any of the provisions of this Section IV, the applicable provisions of Exhibit “A” will control.

2. DEFINITION OF KEY WORDS

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of proposal as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the proposer fails to provide recommended information, the City may, at its sole option, ask the proposer to provide the information or evaluate the offer without the information.

May: Indicates something that is not mandatory but permissible.

For purposes of this RFP, the following definitions shall apply:

“business days” Means days that Phoenix City Hall is open for business.

“days” Means calendar days unless otherwise specified.

“City” The City of Phoenix

“Contractor” The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.

“contract” The legal agreement that occurs when this RFP as completed and executed by a successful proposer is executed by the City.

“Contract Representative” The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.

“Deputy Finance Director” The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.

“proposer” Means a proposer who responds to this RFP.

“RFP” Means this request for proposals, as and if amended in accordance with its terms.
“successful proposer” Means a proposer who is awarded a contract under this RFP and when the proposal is signed by the City, successful proposal also means contractor.

3. CONTRACT INTERPRETATION

3.1 If and when executed by the parties the contract resulting from this RFP will be governed by the laws of the State of Arizona, and any suits pertaining to such contract may be brought only in Federal or State courts in Maricopa County, Arizona.

3.2 Each and every provision of law and any clause required by law to be in the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

3.3 In the event of a conflict in the provisions of any contract resulting from this RFP, as accepted by the City and as may be amended, the following shall prevail in the order of priority set forth below:

A. Exhibit “A” to the extent applicable.
B. Standard Contract Terms and Conditions.
C. Scope of Work.
D. Instructions to Proposers.
E. Other documents referenced or included in this RFP.

3.4 Any contract resulting under this RFP is not intended to constitute, create or give rise to a joint venture agreement or relationship, partnership or other formal business organization between the City and the successful proposer, and the rights and obligations of the parties shall be only those expressly set forth in the contract. The parties agree that no persons supplied under the contract in the performance of the successful proposer’s obligations under the contract are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The successful proposer will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and shall save and hold the City harmless with respect thereto.

3.5 The provisions of the contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

3.6 The City as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, the successful proposer agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
3.7 Any contract resulting under this RFP is intended by the parties as a final complete and exclusive statement of the terms of such contract. No course of prior dealings between the parties and no usage in the trade shall be relevant to supplement or explain any term used in such contract. Acceptance or acquiescence in a course of performance rendered under the contract shall not be relevant to determine the meaning of the contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

3.8 All parties acknowledge that any contract resulting from this RFP is subject to cancellation by the City for conflict of interest pursuant to A.R.S. § 38-511.

3.9 All materials and services delivered in connection with any contract resulting from this RFP are subject to final review and acceptance by the City.

3.10 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under any contract resulting from this RFP if and to the extent that such party's performance of the contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure shall not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with the contract.

4. CONTRACT ADMINISTRATION AND OPERATION

4.1 All books, accounts, reports, files and other records relating to the contract shall be subject at all reasonable times to inspection and audit by the City for five years after completion of any contract resulting from this RFP. Such records will be produced at a City of Phoenix office as designated by the City.

4.2 The successful proposer establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information should be referred to the City. The successful proposer also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the successful proposer as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the City.

4.3 All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to the successful proposer in connection with a contract
resulting hereunder is confidential, proprietary information owned by the City. Except as
specifically provided in any contract resulting from the RFP, the successful proposer will
not disclose data generated in the performance of the service to any third person without
the prior written consent of the City Manager or the designee.

A. Personal identifying information, financial account information, or restricted City
information, whether electronic format or hard copy, must be secured and
protected at all times to avoid unauthorized access. At a minimum, the
successful proposer must encrypt and/or password protect electronic files. This
includes data saved to laptop computers, computerized devices or removable
storage devices.

B. When personal identifying information, financial account information, or restricted
City information, regardless of its format, is no longer necessary, the successful
proposer will redact or destroy such information through appropriate and secure
methods that ensure the information cannot be viewed, accessed, or
reconstructed.

C. In the event that data collected or obtained by the successful proposer hereunder
is believed to have been compromised, such proposer will notify the City Privacy
Officer immediately. The successful proposer agrees to reimburse the City for
any costs incurred by the City to investigate potential breaches of this data and,
where applicable, the cost of notifying individuals who may be impacted by the
breach.

D. The successful proposer agrees that the requirements of this subsection 4.3 shall
be incorporated into all subcontracts entered into by the successful proposer in
connection with this RFP. It is further agreed that a violation subsection 4.3 shall
be deemed to cause irreparable harm that justifies injunctive relief in court. A
violation of this subsection may result in immediate termination of the contract by
the City without notice.

E. The obligations of the successful proposer under this provision will survive the
expiration or termination of the contract resulting from this RFP.

4.4 The successful proposer agrees to fully observe and comply with all applicable Federal,
State and local laws, regulations, standards, codes and ordinances when performing
under a contract resulting from this RFP regardless of whether or not such laws,
regulations, standards, codes and ordinances are referenced by the City. The successful
proposer agrees to permit the City inspect its business records, including personnel
records to verify compliance with this provision.

4.5 The successful proposer agrees that notwithstanding the existence of any dispute
between the parties, insofar as is possible, under the terms of any contract resulting from
this RFP, the successful proposer will continue to perform the obligations required of
such proposer during the continuation of any such dispute unless enjoined or prohibited
by an Arizona Court of competent jurisdiction.
4.6 Failure of either party to a contract resulting from this RFP to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of any services required by the contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

4.7 The City is prohibited by A.R.S. § 41-4401 from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, successful proposer agrees that:

A. Any subcontractor it uses under the contract warrants its compliance with all Federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.

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

C. The City retains the legal right to inspect the papers of the successful proposer or any subcontractor employees who perform services under the contract to ensure that the successful proposer or subcontractor is complying with the warranty under paragraph A above.

4.9 EQUAL EMPLOYMENT OPPORTUNITY

A. The successful proposer in performing under any contract resulting from this RFP shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. Such proposer shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship. The successful proposer further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

B. Contractors may be required to provide additional documentation to the City's Equal Opportunity Department verifying that a nondiscriminatory employment policy is being utilized.

C. The City’s Equal Opportunity Department shall monitor the employment policies and practices of contractors subject to this subsection 4.9 and/or Exhibit “A” as it deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if deemed necessary.
D. In the event the Federal government is requiring reporting, outreach, or affirmative action goals to establish or maintain eligibility for Federal programs; and failure to adhere to these requirements would result in a loss of Federal monies to the City, the Federal requirements shall prevail.

4.10 BACKGROUND SCREENING:

A. The successful proposer agrees that all contract workers and subcontractors (collectively “Contract Worker(s)”) that the successful proposer furnishes to the City pursuant to any contract resulting from this RFP shall be subject to background and security checks and screening (collectively “Background Screening”) at the successful proposer’s sole cost and expense as set forth in this subsection. The Background Screening provided by successful proposer must comply with all applicable laws, rules and regulations. The successful proposer further agrees that the Background Screening required in this subsection is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this subsection are the minimum requirements for any contract resulting from this RFP. The City in no way warrants that these minimum requirements are sufficient to protect the successful proposer from any liabilities that may arise out of the successful proposer’s services under any contract resulting from this RFP or the successful proposer’s failure to comply with this subsection. Therefore, in addition to the specific measures set forth below, the successful proposer and its Contract Workers shall take such other reasonable, prudent and necessary measures to further preserve and protect public health, safety and welfare when providing services under any contract resulting from this RFP.

B. The City has established three levels of risk and associated Background Screening. The risk level and Background Screening required for any contract resulting from this RFP is “Maximum Risk.”

C. A “Minimum Risk” Background Screening shall be performed when the Contract Worker: (i) will not have direct access to City facilities or information systems; or (ii) will not work with vulnerable adults or children; or (iii) when access to City facilities is escorted by City workers. The Background Screening for minimum risk shall consist of the screening required by A.R.S. § 41-4401 and following to verify legal Arizona worker status.

D. A “Standard Risk” Background Screening shall be performed when the Contract Worker’s work assignment will: (i) require a badge or key for access to City facilities; or (ii) allow any access to sensitive, confidential records, personal identifying information or restricted City information; or (iii) allow unescorted access to City facilities during normal and non-business hours. The Background Screening for this Standard Risk level shall include the Background Screening required for the Minimum Risk level and a background check for real identity/legal name, and shall include felony and misdemeanor records from any county in the United States, the State of Arizona, plus any other jurisdiction where the Contract Worker has lived at any time in the preceding seven years from the Contract Worker’s proposed date of hire.
E. A “Maximum Risk” Background Screening shall be performed when the Contract Worker’s work assignment will: (i) have any contact with vulnerable people such as children, youth, elderly, or individuals with disabilities; or (ii) have any responsibility for the receipt or payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or (iii) have unescorted access to City data centers, money rooms, or high-value equipment rooms; or (iv) have access to private residences; or (v) have access to Homeland Defense Bureau identified critical infrastructure sites/facilities. The Background Screening for this maximum risk level shall include the Background Screening required for the Standard Risk level, plus a sexual offender search, a credit check, and driving record search for the preceding seven years from the Contract Worker’s proposed date of hire. Contract Workers who work directly with children or vulnerable adults are also subject to fingerprint verification through the Arizona Department of Public Safety as mandated by Phoenix City Code, § 2-45.6.

F. By executing this RFP, the successful proposer certifies and warrants that the successful proposer has read the Background Screening requirements and criteria in this subsection, understands them and that all Background Screening information furnished to the City is accurate and current. Also, in any contract resulting from this RFP, the successful proposer further certifies and warrants that the successful proposer has satisfied all such Background Screening requirements for the Minimum Risk and Standard Risk Background Screenings as required. In addition, for Maximum Risk Background Screening, Contractor shall furnish to the Diversion Programs Administrator for the City’s review and approval such Background Screenings for any Contract Worker considered for performing services under any contract resulting from this RFP where human safety or facility security is classified as a Maximum Risk level. The subject Contract Worker shall not apply for the appropriate City identification and access badge or keys until Contractor has received the City’s written acceptance of the subject Contract Worker’s Maximum Risk Background Screening. The City may, in its sole discretion, accept or reject any or all of the Contract Workers proposed by the successful proposer for performing work under the contract resulting from this RFP. A Contract Worker rejected for work at a Maximum Risk level under this Agreement shall not be proposed to perform work under other City contracts or engagements without City’s prior written approval.

G. The successful proposer shall include the terms of this subsection 4.10 regarding Background Screening in all contracts and subcontracts for services furnished under any contract resulting from this RFP including, but not limited to, supervision and oversight services.

H. The Background Screening requirements of this subsection are material to City’s entry into any contract resulting from this RFP and any breach of this subsection by the successful proposer will be deemed a material breach of any contract resulting from this RFP. In addition to the indemnity provisions otherwise set forth in any contract resulting from this RFP, the successful proposer shall defend, indemnify and hold harmless the City for any and all Claims (as defined in Section V herein) arising out of this subsection including, but not limited to, the disqualification of a Contract Worker by the successful proposer or the City for failure to satisfy this subsection.
I. The successful proposer’s obligations and requirements that Contract Workers satisfy this subsection 4.10 shall continue throughout the entire term of any contract resulting from this RFP. The successful proposer shall notify the City immediately of any change to a Maximum Risk Background Screening of a Contract Worker previously approved by the City. The successful proposer shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit such proposer’s compliance with this subsection 4.10.

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

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

5. FEES AND EXPENSES

5.1 The City shall attempt to process payment for the services rendered under any contract resulting from this RFP within 30 calendar days after receipt of a correct invoice unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are otherwise specified in Section VII hereof.

5.2 The successful proposer acknowledges that the City Charter requires that no payment be made to the successful proposer as long as there is an outstanding obligation due to the City by such proposer. The successful proposer agrees that any obligation it owes to the City will be offset against any payment due to the proposer from the City.

5.3 The successful proposer acknowledges and agrees that the City will not honor any invoices or claims which are tendered one year or more after the last item of the account accrued.

5.4 The successful proposer acknowledges and agrees that advanced payments for services are not authorized. The successful proposer acknowledges that payment will be made only for actual services received.

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

6. CONTRACT CHANGES

6.1 Any contract resulting from this RFP shall be modified only by a written contract amendment signed by the Deputy Finance Director and persons duly authorized to enter into contracts on behalf of the successful proposer.

6.2 No right or interest in any contract resulting from this RFP nor monies due thereunder shall be assigned in whole or in part without written permission of the City, and no delegation of any duty of the successful proposer shall be made without prior written permission of the Deputy Finance Director, which may be withheld for good cause. Any assignment or delegation made in violation of this subsection shall be void.

6.3 The successful proposer agrees that if any contract is awarded under this RFP it is with the understanding and agreement that the contract is for the sole convenience of the City and is a non-exclusive contract. The successful proposer agrees that the City reserves the right to obtain any of the services described in the Scope of Work (Section II) from another source.

7. RIGHTS AND REMEDIES

7.1 The City has the right to issue a written notice of default to the successful proposer if in the opinion of the City:

A. The successful proposer provides personnel who do not meet the requirements in any contract resulting from this RFP;

B. The successful proposer fails to perform adequately the stipulations, conditions or services/specifications required in contract resulting from this RFP;

C. The successful proposer attempts to impose on the City services, which are of an unacceptable quality.

D. The successful proposer fails to furnish the services described in the Scope of Work (Section IV) within the time stipulated herein;

E. The successful proposer fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that the successful proposer will not or cannot perform to the requirements of the contract.

7.2 In case of default by the successful proposer as provided in subsection 8.1 above, the City may, by written notice, cancel the contract resulting from this RFP and repurchase
any of all of the services described in the Scope of Work (Section II) from another source and may recover the excess costs by (a) deduction from an unpaid balance due the successful proposer; and (b) exercise all other rights and remedies available to the City in law and in equity.

7.3 In addition, any contract resulting from this RFP may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving 30 days written notice to successful proposer. The City at its convenience, by written notice, may terminate the contract, in whole or in part. If the contract is terminated, the City shall be liable only for payment under the payment provisions of such contract for services rendered and accepted by the City and materials received and approved by the City before the effective date of termination. Title to all those materials will pass to the City after upon payment of the fees and costs provided in the contract. The successful proposer shall submit detailed invoice of all costs and expenses for services rendered and materials delivered, provided such services and materials have been accepted by the City. The successful proposer will permit the City to examine such books and records of the successful proposer as may be necessary in order to verify the reasonableness of any claims.

8. OPTION TO EXTEND
The City may, at its option and with approval of the Contractor, extend the period of this agreement for up to three (3) additional year(s), in increments of one (1) year.
1. INDEMNIFICATION

The successful proposer (Indemnitor herein) will indemnify, defend, save and hold harmless the City and its officers, officials, agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (“Claims”) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors in connection with any contract arising under this RFP. This indemnity includes Claims arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of such successful proposer to conform to any Federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee will, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the successful proposer from and against any and all Claims. That the successful proposer will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of the contract, the successful proposer agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the successful proposer for the City.

2. INSURANCE REQUIREMENTS

The successful proposer and any subcontractors permitted hereunder shall procure and maintain until all of their obligations have been discharged, including any warranty periods under any contract resulting from this RFP are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of any part of the Scope of Work (Section II) by the successful proposer, its agents, representatives, employees or subcontractors. The insurance requirements herein are minimum requirements for the contract and in no way limit the indemnity covenants contained in the contract. The City in no way warrants that the minimum limits contained herein are sufficient to protect the successful proposer from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and the contractor is free to purchase additional insurance as may be determined necessary.

2.1 The successful proposer shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

A. The Commercial General Liability – Occurrence Form Policy will include bodily injury, property damage and broad form contractual liability coverage

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

The policy shall be endorsed to include the following additional insured language: “The City of Phoenix shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the successful proposer”.

Company Name

Proposal Opening Date: 2/16/2016

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B. The Automobile Liability Policy will include coverage for bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of any contract resulting from this RFP.

- Combined Single Limit (CSL) $1,000,000

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

C. The Worker's Compensation and Employers' Liability Policy will meet the following minimum requirements:

- Workers' Compensation Statutory Employers' Liability
  - Each Accident $100,000
  - Disease – Each Employee $100,000
  - Disease – Policy Limit $500,000

This policy shall contain a waiver of subrogation against the City of Phoenix. This requirement shall not apply when a contractor or subcontractor is exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

D. The Professional Liability (Errors and Omissions Liability) Policy will include professional misconduct or lack of ordinary skill for those positions defined in the services described in the Scope of Work (Section II).

- Each Claim $1,000,000
- Annual Aggregate $2,000,000

In the event that the professional liability insurance required by any contract resulting from this RFP is written on a claims-made basis, successful proposer warrants that any retroactive date under the policy shall precede the effective date of the contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning at the time work under such contract is completed.

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

A. On insurance policies where the City of Phoenix is named as an additional insured, the City of Phoenix shall be an additional insured to the full limits of liability purchased by the successful proposer even if those limits of liability are in excess of those required by this insurance provision.

B. The successful proposer's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
2.3. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after 30 days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten days prior notice may be given. Such notice shall be sent directly to City of Phoenix, Deputy Finance Director/Real Estate, 251 West Washington, Phoenix, Arizona 85003.

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

2.5. The successful proposer will furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this insurance provision. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

B. All certificates required by any contract resulting from this RFP shall be sent directly to City of Phoenix, Deputy Finance Director/Real Estate, 251 West Washington, Phoenix, Arizona 85003. The City project/contract number and project description shall be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.

2.6. The successful proposer’s certificate(s) must include all subcontractors as additional insureds under its policies or the successful proposer will furnish the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

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

TO THE CITY OF PHOENIX:

The Undersigned hereby offers and agrees to furnish the service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of this RFP and any written exceptions in the proposal.

Proposer certifies that the proposer has read, understands, and will fully and faithfully comply with this RFP, its attachments and any referenced documents. Proposer also certifies that the prices offered were independently developed without consultation with any of the other proposers or potential proposers.

Authorized Signature ______________________ Date _____________________

Printed Name and Title ________________________________

Company Name _______________________________________
Address ____________________________________________
City, State and Zip Code ________________________________
Telephone Number ____________________________________
Company’s Fax Number ________________________________
Email Address ________________________________________
ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the Request for Proposal including all terms, conditions, specifications, amendments, etc. and the Contractor’s Offer as accepted by the City.

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

CITY OF PHOENIX, a municipal corporation
Ed Zuercher, City Manager

City Clerk Attestation

Mary Vivion- Withrow, Deputy Finance Director
Awarded this ______ day of _____________, 2016.

Acting City Attorney
Approved as to form this ___ day of __________, 2016.
PROPOSAL PRICE SCHEDULE

**Note:** Prices offered shall not include applicable state and local taxes. The City will reimburse the successful proposer for all transaction privilege taxes, whether State or local, applicable taxes; provided however, this provision in no way obligates the City to be responsible for paying the successful proposer’s taxes, that obligation will remain with such proposer. **For the purposes of determining the lowest cost, the City will not take tax into consideration.** Taxes must be listed as a separate item on all invoices.

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<th>Contractor Position</th>
<th>Number of Staff</th>
<th>Allocation %</th>
<th>Total Monthly Labor Cost</th>
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FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES

The Scope of Work performed by the successful proposer may be funded, in whole or in part, with Federal funds through Federal Transit Administration (“FTA”). As consequence of that funding, the following FTA mandated provisions are included in this RFP as part of and contract resulting hereunder.

1. No Obligation by the Federal Government

The City and the successful proposer acknowledge and agree that:

(A) Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the contract resulting from this RFP, absent the express written consent by the Federal Government, the Federal Government is not a party to the contract and will not be subject to any obligations or liabilities to the City, the successful proposer, or any third party relating to any matter arising from such contract.

(B) The successful proposer agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-Contractor who will be subject to its provisions.

2. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges and agrees that:

(A) The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of any contract resulting from this RFP, the successful proposer certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or causes to be made, pertaining to such contract or the FTA assisted project for which work under such contract is being performed. In addition to other penalties that may be applicable, the successful proposer further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the successful proposer to the extent the Federal Government deems appropriate.

(B) If the successful proposer makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(C) The successful proposer shall include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA and each such
clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. **Access to Records**

   (A) In accordance with 49 C.F.R. 18.36(i), the successful proposer shall provide the City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to any contract resulting from this RFP for the purposes of making audits, examinations, excerpts and transcriptions. Pursuant to 49 C.F.R. 633.17, the successful proposer shall provide the FTA Administrator or his authorized representatives including any PMO contractor access to the successful proposer’s records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

   (B) The successful proposer will permit any of the foregoing parties to reproduce by any means whatsoever or to copy such excerpts and transcriptions as are reasonably needed.

   (C) The successful proposer will maintain all books, records, accounts and reports required under any contract resulting from this RFP for a period of not less than three years after the date of termination or expiration of such contract, except in the event of litigation or settlement of claims arising from the performance of such contract, in which case the successful proposer agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

   (D) FTA does not require the inclusion of these requirements in subcontracts.

4. **Federal Changes**

   The successful proposer will at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the any contract between the City and the FTA (the FTA Master Contract), as they may be amended or promulgated from time to time during the term of such contracts. The successful proposer’s failure to so comply shall constitute a material breach of any contract resulting from this RFP.

5. **Civil Rights**

   The following requirements apply any contract resulting from this RFP:

age, or disability. In addition, the Contractor shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue.

(B) The following equal employment opportunity requirements apply to the underlying contract:

(i) In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor shall comply with any implementing requirements FTA may issue.

(ii) In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor shall comply with any implementing requirements FTA may issue.

(iii) In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor shall comply with any implementing requirements FTA may issue.

(C) The successful proposer will include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(D) For assistance with a contract clause incorporating the requirements of the new DBE rule in 49 CFR Part 26, contact the FTA HelpLine at www.ftahelpline.com.
6. Termination

(A) The City may terminate any contract resulting from this RFP, in whole or in part, at any time by written notice to the successful proposer when it is in the City’s sole and unfettered opinion, it is in the City’s best interest to do so. The successful proposer shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The successful proposer will promptly submit its termination claim to the City for payment. If the successful proposer has any property in its possession belonging to the City, the successful proposer will account for the same, and dispose of it in the manner the City directs.

(B) The City may terminate and any contract resulting from this RFP if: (a) the successful proposer does not deliver supplies in accordance with the delivery schedule set forth in the contract; (b) if the Contract is for services and the successful proposer fails to perform in the manner specified in the contract; or, (c) the successful proposer fails to comply with any other provisions of the contract. Termination shall be effected by serving a notice of termination upon the successful proposer setting forth the manner in which the successful proposer is in default. The successful proposer will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

(C) If it is later determined by the City that the successful proposer had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the successful proposer, the City, after setting up a new delivery or performance schedule, may allow the successful proposer to continue work, or treat the termination as a termination for convenience.

(D) In case of a termination for breach or default, the City may, in its sole and unfettered discretion, allow the Contractor ten calendar days within which to cure the defect. Should a cure period be granted, the notice of termination will state the time period within which cure is permitted together with other appropriate conditions. If the successful proposer fails to remedy the breach or default of any of the terms, covenants, or conditions of this Contract to the City’s satisfaction within ten calendar days after receipt by the successful proposer of written notice from the City setting forth the nature of said breach or default, then, and in that event, the City shall have the right to terminate the contract without any further obligation to the successful proposer. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against such proposer and its sureties for said breach or default.

E. Should the City elect to waive its remedies for any breach by the successful proposer of any covenant, term or condition of any contract resulting from this RFP, such waiver by the City shall not limit the City’s remedies for any succeeding breach of that or of any other term, covenant, or condition of the contract.

7. Disadvantaged Business Enterprises

The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. For this business opportunity, the City has not
established a race- and gender-conscious DBE participation goal. Any efforts to achieve DBE participation will be counted as race- & gender-neutral DBE participation.

8. Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the City that would cause the City to be in violation of the FTA terms and conditions.

9. Certification Regarding Debarment and Suspension

The successful proposer certifies that neither it nor its “principals” [as defined at 49 C.F.R. 29.105(p)] are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by an federal department or agency. The successful proposer agrees to submit a certified copy of ATTACHMENT I with its proposal.

10. Disputes

(A) Disputes arising in the performance of any contract resulting from this RFP that are not resolved by agreement of the parties shall be decided in writing by the Contract Specialist (Lead) or his designee. This decision shall be final and conclusive unless within ten calendar days from the date of receipt of its copy, the successful proposer mails or otherwise furnishes a written appeal to the Deputy Finance Director of the Real Estate Division or designee. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Deputy Finance Director of the Real Estate Division or the Deputy’s designee shall be binding upon the successful proposer and the successful proposer will abide by the decision.

(B) Unless otherwise directed by the City, the successful proposer will continue performance under the contract while matters in dispute are being resolved.

(C) Should either party to any contract resulting from this RFP suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose act it is legally liable, a claim for damages therefore shall be made in writing to such other party within five calendar days after the first observance of such injury of damage.

(D) Unless such contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the successful proposer arising out of or relating to the contract or its breach will be decided by arbitration if the parties mutually agree, or in a State court of competent jurisdiction within the State of Arizona.
The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or the successful proposer will constitute a waiver of any right or duty afforded any of them under such contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

11. Lobbying

(A) The successful proposer certifies that no federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of the City, 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 federally appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of the City, 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 successful proposer shall complete and submit Standard Form LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(C) The successful proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

(D) The proposer certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the successful proposer understands and agrees that the provisions of 31 U.S.C. A3801, et.seq., apply to this certifications and disclosure if any.

(E) 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 Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than $10,000, and not more than $100,000, for each such failure.

12. Clean Air

The successful proposer shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The successful proposer shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
The Contractor shall also include these requirements in each subcontract exceeding $100,000 financed in whole or part with federal assistance provided by FTA.

13. Clean Water

The successful proposer shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The successful proposer shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The successful proposer shall also include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

14. Fly America

The successful proposer shall comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, the successful proposer shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The successful proposer shall include the requirements of this section in all subcontracts that may involve international air transportation.

15. Seismic Safety (A&E for new buildings and additions)

The successful proposer agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The successful proposer also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

16. Patent Rights (R & D)

(A) If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under any contract resulting from this RFP to which this attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and the successful proposer agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(B) Unless the Federal Government later makes a contrary determination in writing, irrespective of the successful proposer’s status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution
of high education, individual), the City and the successful proposer agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 C.F.R. Part 401.

(C) The successful proposer also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

17. Rights in Data and Copyrights Requirements (R & D)

(A) The term “subject data” used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punch cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term “subject data” does not include financial reports, cost analyses, and similar information incidental to contract administration.

(B) The following restrictions apply to all subject data first produced in the performance of the contract to which this attachment has been added:

(i) Except for its own internal use, the City or the successful proposer may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the City or the successful proposer authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(ii) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for “Federal Government purposes,” any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, for Federal Government purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.

   a. Any subject data developed under that Contract, whether or not a copyright has been obtained; and

   b. Any rights of copyright purchased by the City or the successful proposer using Federal assistance in whole or in part provided by FTA.
(iii) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA’s general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the City and the successful proposer performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the City or the successful proposer’s use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(iv) Unless prohibited by State law, upon request by the Federal Government, the City and the successful proposer agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the City or successful proposer of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the City nor the successful proposer shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(v) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(vi) Data developed by the City or successful proposer and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the City or Contractor identifies that data in writing at the time of delivery of the contract work.

(vii) Unless FTA determines otherwise, the successful proposer agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(C) Unless the Federal Government later makes a contrary determination in writing, irrespective of the successful proposer’s status (i.e., a large business, small business, state government or state instrumentality, etc.), the City and the successful proposer...
agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Governmental Grants, Contracts and Cooperative Agreements.” 37 C.F.R. Part 401.

(C) The successful proposer also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

18. Energy Conservation

The successful proposer shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State of Arizona Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

19. Conformance with Intelligent Transportation System (ITS) Architecture

This project will receive a systems engineering analysis to ensure it conforms to the National ITS Architecture and complies with the locally-approved plan for regional ITS architecture.

20. ADA Access

The Engineer agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.

(1) Section 504 of the Rehabilitation Act of 1973, as amended (Section 504): 29 USC 794 prohibits discrimination on the basis of disability by recipients of federal financial assistance.

(2) Americans with Disabilities Act of 1990, as amended: 42 USC 12101 et seq. prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

(3) DOT Public Transportation Regulations implementing Section 504 and the ADA: These regulations include DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR 27, DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR 37, and Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR 1192 and 49 CFR 38. Examples of requirements include, but are not limited to, the following:

(a) Design and Construction. Accessibility requirements for the design and construction of new transportation facilities;

(b) Accessibility and Usability. Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;
(c) Complementary Paratransit Service. Requirements that public entities providing fixed-route service, (including a private non-profit entity providing public transportation service on behalf of the State or designated recipient as a subrecipient providing fixed-route service), provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service;
(d) Equal Opportunity. Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.

21. Notification of Federal Participation

To the extent required by law, in the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of $500,000 or more, the City shall specify the amount of federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.
CERTIFICATION REGARDING DEBARMENT SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

1) The prospective participant (proposer for a federally funded project) certifies, by submission of this proposal and certification, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

2) Where the prospective participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.

THE PARTICIPANT (proposer for a federally funded project), CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ. ARE APPLICABLE THERETO.

[NAME OF PROPOSER]

Authorized Official

Title of Authorized Official

Date
CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

Section 319 of Public Law 101-121 prohibits recipients of federal contracts from using appropriated funds for lobbying U.S. Federal Agencies or the United States Congress in connection with a specific covered federal action and requires all persons to disclose lobbying if they request or receive a covered federal action.

The undersigned certifies, to the best of his or her knowledge and belief, that:

1) No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including Sub-contractors, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Sub-recipients shall certify and disclose accordingly.

THIS CERTIFICATION IS A MATERIAL REPRESENTATION OF FACT UPON WHICH RELIANCE WAS PLACED WHEN THIS TRANSACTION WAS MADE OR ENTERED INTO. SUBMISSION OF THIS CERTIFICATION IS A PREREQUISITE FOR MAKING OR ENTERING INTO THIS TRANSACTION IMPOSED BY SECTION 1352, TITLE 31, U.S. CODE. ALL PROVISIONS OF PUBLIC LAW 101-121, SECTION 319 ARE APPLICABLE THERETO.

Signature of Authorized Official___________________________________________

Title of Authorized Official________________________________________________

Date______________________________
FREE COMPETITIVE PROPOSING AFFIDAVIT
(Section 1128 of Title 23, United States Code)

State of

County of

I, _________________ (PROPOSER or name and title of authorized representative) says and certifies: That said PROPOSER has not, either directly, or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive proposing in connection with the contract for Proposal No. ________.

PROPOSER

Name and Title of Authorized Representative

Date

Taken, subscribed and sworn to before me this ________ day of ________________, 2015.

Notary Seal

Notary Public

My commission expires
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
RACE- AND GENDER-NEUTRAL CONTRACT CLAUSE
(Negotiated Contracts)

SECTION I. DEFINITIONS

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

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

Commercially Useful Function means that a DBE is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE is presumed not to be performing a Commercially Useful Function.

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

DBE stands for disadvantaged business enterprise. In this context, DBE means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by the City of Phoenix or another AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

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

EOD means the City of Phoenix Equal Opportunity Department.

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

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

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

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

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

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

Submitter means an individual, partnership, JV, corporation or firm that tenders a submittal to the Agency to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative.

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

SECTION II. GENERAL REQUIREMENTS

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

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

C. **Counting DBE Participation.** The Agency will count DBE participation as authorized by federal regulations. A summary of these regulations can be found at [phoenix.gov/eod](http://phoenix.gov/eod).

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

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

> “The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Phoenix deems appropriate.”

Note: For purposes of the required Contract and Subcontract language above, the Successful
Submitter is the “contractor.”

SECTION III. REQUIRED OUTREACH EFFORTS

The Agency has implemented outreach requirements for this Contract. Specifically, each Submitter shall: (1) identify DBE and Small Business participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from DBEs and Small Businesses; (3) evaluate DBE and Small Business proposals; and (4) communicate selection decisions to DBEs and Small Businesses, including each rejection of a DBE or Small Business proposal. If a Submitter fails to conduct these Outreach Efforts or fails to submit the required documentation of Submitter’s Outreach Efforts as indicated in Section IV below, the Agency may determine that the Submitter’s submittal is nonresponsive. A determination of nonresponsiveness disqualifies Submitter from further consideration for the Contract award.

SECTION IV. SUBMITTAL REQUIREMENTS

A. Outreach-Efforts documentation due with initial qualifications-based submittal.

1. Attachment A. Each Submitter shall complete and submit Attachment A documenting its diligent, good-faith Outreach Efforts. Attachment A must be submitted with the initial qualifications-based submittal.

   a. Each Submitter shall list in Attachment A all DBEs and Small Businesses contacted by Submitter in preparing its submittal. Each Submitter shall also provide the following minimum information to document its Outreach Efforts. The DBE Compliance Specialist will consider this information to determine whether Submitter has demonstrated the required Outreach Efforts:

   1) Each business’s full legal name and contact information;
   2) Business status (DBE, Small Business, SBE, or unknown);
   3) Scope of work solicited (brief description, percentage of contract value);
   4) Solicitation method (personal contact, telephone, fax, e-mail, other);
   5) Selection process; and
   6) Communication of selection outcome to each participant.*

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

   b. Each Submitter shall complete Attachment A in accordance with the following instructions.

   1) Each Submitter shall actively contact DBEs or Small Businesses for each scope of work or business opportunity selected for Outreach Efforts (Columns A and C).
   2) Submitter’s contacts with DBEs and Small Businesses should occur well before the deadline for the initial qualifications-based submittal to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Contract.
   3) Submitter shall ask each firm to indicate the number of its employees (Column A).
   4) For each DBE’s or Small Business’s annual gross receipts, Submitter shall ask the firm to indicate the gross-receipts bracket into which it fits (e.g., less than $500,000; $500,000 – $1 million; $1 – 2 million; $2 – 5 million; etc.) rather than requesting an exact figure from the firm (Column A).
   5) If Submitter does not select a DBE or Small Business to participate in the Contract,
Submitter shall explain the reason why (Column E).

6) Submitter shall notify each DBE or Small Business contacted whether or not Submitter selected the firm (Column E). Submitter shall notify all firms not selected, and Submitter shall state when (date) and how (method) the selection outcome was communicated to Each firm (Column F).

2. Attachment A Supporting Documentation. Each Submitter shall complete and submit supporting documentation of its Outreach Efforts related to Attachment A.

   a. Submitter shall submit with Attachment A—on the due date for Attachment A—all supporting documentation of Submitter’s contacts with DBEs or Small Businesses for each scope of work or business opportunity selected for Outreach Efforts.
   b. This documentation must include (1) descriptions of scopes of work and business opportunities identified for DBE and Small Business participation, and (2) a copy of the actual solicitation sent to interested DBEs and Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce.
   c. Submitter shall submit documentation that establishes how Submitter communicated its selection decisions and outcomes to each DBE and Small Businesses not selected for this Contract. This documentation may be in the form of a letter, e-mail, or telephone log. The documentation must show the name of the person contacted and the date.
   d. For all of the above documentation, if Submitter uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Submitter must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of transmission. For telephone contacts, Submitter shall document the date and time of the call and the names of the respective persons representing Submitter and the DBE or Small Business.

B. Outreach-Efforts documentation due within seven days after final negotiations.

1. Attachments B-1 And B-2. Within seven days after final negotiations with the Agency, the Submitter selected for negotiations shall complete and submit Attachments B-1 and B-2. Submitter must show diligent, good-faith Outreach Efforts and provide information regarding its DBE and Small Business selection decisions and outcomes for all negotiations with DBEs and Small Businesses. Attachment B-1 must contain the names of all DBEs and Small Businesses reported as “selected” on Attachment A, Column E, and all supporting documentation (if applicable).

2. Instructions for completing Attachments B-1 and B-2.

   a. Attachment B-1 Negotiations with Small Businesses. The Submitter shall provide the following information in Attachment B-1, which the DBE Compliance Specialist will evaluate to determine whether Submitter negotiated diligently and in good faith with the DBEs and Small Businesses identified in Attachment A, Column E, as potential participants in the Contract’s business opportunities:

      1) Each business’s full legal name and contact information;
      2) Business status (DBE, Small Business, SBE, or unknown);
      3) Scope of work to be performed (brief description, percentage of contract value);
      4) Type of agreement;
      5) Agreement amount; and
6) Communication of final selection outcomes to participants.*

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

The Successful Submitter shall complete all appropriate boxes in Attachment B-1 and shall indicate the firms with which Submitter has negotiated, including firms that Submitter proposes will participate in and perform part of the Contract. Supporting documentation may include copies of e-mails, letters, faxes, or contact logs stating the name of the firm, date and time of communication, and the identity of the person contacted.

b. Attachment B-2 Small Business Utilization Commitment. The Successful Submitter shall sign and submit Attachment B-2, which commits the Successful Submitter to the Agency as follows:

1) The firms indicated as selected in Attachment B-1 will participate in the Contract;
2) The Successful Submitter will comply with the Race- and Gender-Neutral post-award requirements as stated in Sections V and VI below;
3) Any and all changes or substitutions must first be authorized by the DBE Compliance Specialist before implementation; and
4) The proposed total DBE and Small Business participation percentage is true and correct.

Submitter shall ensure that the percentages proposed for Small Business participation on Attachment B-1 equal the total percentage proposed in Attachment B-2.

If the Successful Submitter fails to timely submit a completed copy of Attachment B-1 or Attachment B-2, or fails to provide the required supporting documentation for Attachment B-1, the Agency may determine that Submitter’s proposal is nonresponsive. A determination of nonresponsiveness disqualifies Submitter from further consideration for the Contract award.

C. Failure To Meet Outreach Requirements. The DBE Compliance Specialist will determine, in writing, whether Submitter has satisfied all outreach requirements. If the DBE Compliance Specialist determines that Submitter has failed to satisfy the outreach requirements (specified in Sections III and IV, Parts A & B), then the DBE Compliance Specialist may determine that the submittal is nonresponsive. A determination of nonresponsiveness disqualifies Submitter from further consideration for the Contract award. The Agency shall send written notice to Submitter stating the basis for DBE Compliance Specialist’s decision.

D. Administrative Reconsideration. If the DBE Compliance Specialist determines that Submitter did not properly complete Attachment A or Submitter failed to demonstrate sufficient Outreach Efforts or failed to submit required documentation, then the Agency will permit Submitter to request EOD to reconsider this determination. In its request for reconsideration, Submitter may clarify its submittal. But Submitter may not submit or refer to new or revised documents or information. EOD will only reconsider the original submittal as clarified in the request for reconsideration.

If Submitter requests EOD to reconsider the DBE Compliance Specialist’s determination of nonresponsiveness based on insufficient Outreach Efforts or insufficient documentation, then Submitter must provide written notice to the Agency and EOD within three business days of the Agency’s notice of disqualification to Submitter. The request for reconsideration should be addressed to:
SECTION V. POST-AWARD COMPLIANCE REQUIREMENTS

A. **Subcontracting Commitment.** Promptly after Contract award, the Successful Submitter shall submit to the Agency a list of all subcontractors and copies of all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between the Successful Submitter and any DBE or Small Business.

The Successful Submitter shall not terminate any DBE or Small Business Subcontracts, and the Successful Submitter shall not alter the scope of work or reduce the Subcontract amount, without the DBE Compliance Specialist’s prior written approval. Any request to alter a DBE or Small Business Subcontract must be submitted in writing to the DBE Compliance Specialist before any change is made. If the Successful Submitter fails to do so, the Agency may declare Submitter in breach of contract.

B. **Relief From Proposed DBE Utilization.** After Contract award, the Agency will not grant relief from the proposed DBE or Small Business utilization except in extraordinary circumstances. The Successful Submitter’s request to modify DBE or Small Business participation must be in writing to the DBE Compliance Specialist. The DBE Compliance Specialist has final discretion and authority to determine if the request should be granted.

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

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

C. **DBE Substitutions.** If the DBE or Small Business was approved by the Agency, but the firm subsequently loses its DBE or Small Business status before execution of a contract, the DBE Compliance Specialist will consider whether or not the Successful Submitter has exercised diligent and good-faith efforts to find another DBE or Small Business as a replacement. The Successful Submitter shall notify the DBE Compliance Specialist in writing of the necessity to substitute a DBE or Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a DBE or Small Business may not occur before the DBE Compliance Specialist’s written approval has been obtained.

D. **Prompt Payment Of Subcontractors.** Within seven days of the Successful Submitter’s receipt of an Agency progress payment that includes amounts for the Submitter’s Subcontractors, suppliers, or subconsultants, the Submitter shall pay the Subcontractors, suppliers, and subconsultants the
respective amounts allowed for satisfactory performance of their work.

If the Agency reduces the Successful Submitter’s retention, the Submitter shall correspondingly reduce the retentions of Subcontractors and suppliers that have performed satisfactory work. Under the prompt-payment provisions of 49 CFR Part 26, the Successful Submitter must ensure prompt and full payment of retentions to Subcontractors and suppliers when their work is complete, the Agency has accepted the work, and the Agency has paid the Successful Submitter for the work. The Successful Submitter shall pay each Subcontractor’s and supplier’s retention no later than 30 days after the Agency pays Submitter.

If the Successful Submitter diverts any payment received for a DBE’s, Small Business’s, or other Subcontractor’s work performed on the Contract or fails to reasonably account for the application or use of the payment, the Agency may declare the Successful Submitter in breach of contract. If the Successful Submitter fails to make payments under these provisions, the Agency may take any one or more of the following actions:

1. Declare the Successful Submitter in breach of contract;
2. Withhold future payments, including retention, until proper payment has been made to all Subcontractors and suppliers;
3. Reject the Successful Submitter’s future bids on Agency contracts for a period not to exceed one year from the substantial-completion date of this Contract; and/or
4. Terminate the Contract.

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

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

1. A complete listing of all Subcontractors and suppliers on the project;
2. Each Subcontractor’s and supplier’s scope of work performed;
3. The dollar value of all subcontracting work, services, and procurement;
4. Copies of all executed Subcontracts, purchase orders, and invoices; and
5. Copies of all payment documentation.

B. **Reports.** At the beginning of each month, the Successful Submitter must enter the following documentation and payment information into the Agency’s web-based certification and compliance system. The system can be found at [http://phoenix.diversitycompliance.com](http://phoenix.diversitycompliance.com):

1. The total of all payments received from the Agency during the previous month.
2. All payments made to DBEs or Small Businesses during the previous month.
3. Copies of all Subcontractors’ subcontracts executed with DBEs or Small Businesses utilized during the previous month.

This information will document DBE and Small Business participation that occurred during each payment-request period throughout the Contract’s duration. Copies of all DBEs’ and Small Businesses’ payment requests and invoices must be submitted for each report period.

Before the Agency processes the Successful Submitter’s final payment, the Successful Submitter shall submit to the Agency a final certification of full and final payment to each Subcontractor in the form prescribed by the Agency. The form must be completed and certified by the Successful Submitter’s and each Subcontractor’s duly authorized agents.
Each submitter must conduct outreach efforts and submit documentation of those outreach efforts as described in Sections III and IV of the Disadvantaged Business Enterprise (DBE) Program Race- and Gender-Neutral Contract Clause (Contract Clause). Detailed instructions for this form are included in Section IV of the Contract Clause. Supporting documentation is required for columns D and F. Submitters should make additional copies of this form as needed.

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<th>(B) Business Status</th>
<th>(C) Scope of Work Solicited</th>
<th>(D) Solicitation Method</th>
<th>(E) Small Business Selection Decision</th>
<th>(F) Communication of Selection Outcomes</th>
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</table>

| Name:                                        | □ DBE               | □ Newspapers or Websites    | □ Firm was selected    | Date:                                |
| Address:                                     | □ SBC - Small Business Concern | □ Trade and/or Professional Listing | □ Firm was not selected | Methods of Communication             |
| City, State, Zip:                           | □ SBE - City of Phoenix Certified | □ Business Outreach Events  | Explain why this firm was not selected as a proposed participant |
| Phone Number:                               | □ Unknown           | □ E-mail blast              |                        |                                       |
| Range of Annual Gross Receipts:             | Number of Employees: | □ Other                     |                        |                                       |

<p>| Name:                                        | □ DBE               | □ Newspapers or Websites    | □ Firm was selected    | Date:                                |
| Address:                                     | □ SBC - Small Business Concern | □ Trade and/or Professional Listing | □ Firm was not selected | Methods of Communication             |
| City, State, Zip:                           | □ SBE - City of Phoenix Certified | □ Business Outreach Events  | Explain why this firm was not selected as a proposed participant |
| Phone Number:                               | □ Unknown           | □ E-mail blast              |                        |                                       |
| Range of Annual Gross Receipts:             | Number of Employees: | □ Other                     |                        |                                       |</p>
<table>
<thead>
<tr>
<th>(A) Small Business Contact Information</th>
<th>(B) Business Status</th>
<th>(C) Scope of Work/Services to be Performed</th>
<th>(D) Type of Agreement</th>
<th>(E) Agreement Amount</th>
<th>(F) Communication of Final Selection Outcomes</th>
</tr>
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<tbody>
<tr>
<td>Name:</td>
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<td>Date:</td>
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<td>Address:</td>
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<td>Method of Communication:</td>
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<td>City, State, Zip:</td>
<td>Number of Employees:</td>
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<td>As a Percent of Total Contract Award:</td>
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<td>Phone Number:</td>
<td>E-Mail or Fax:</td>
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<tr>
<td>Range of Annual Gross Receipts:</td>
<td>Number of Years in Business:</td>
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<td>Other:</td>
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<td>Firm Selected</td>
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</tbody>
</table>

This form is due from the Successful Submitter within 7 days of final contract negotiations with the see. Make additional copies of this sheet as needed. Detailed instructions for this form are included in Section IV of the Contract Clause.
ATTACHMENT B-2
SMALL BUSINESS UTILIZATION COMMITMENT
(NEGOTIATED CONTRACTS)

On behalf of the Successful Submitter, I certify under penalty of perjury that the following information is true and correct.

1) The firms indicated as selected in Attachment B-1, Negotiations with Small Businesses, will participate in this contract.

2) The Successful Submitter will comply with the Race- and Gender-Neutral post-award requirements stated in Sections V and VI of the DBE contract clause.

3) The Successful Submitter understands and agrees that any and all changes or substitutions must be authorized by the Equal Opportunity Department before implementation.

4) The following statement is true and correct: The proposed total participation of DBE, SBC, and SBE firms in this contract will be: _____ %

Signed: ____________________________________________

Print Name: __________________________________________

Title: ________________________________________________

Name of Company: ____________________________________

Date: ________________________________________________