



PIMA COUNTY

PROCUREMENT

SOLICITATION FOR QUALIFICATIONS

**DESIGN ENGINEERING SERVICES FOR
CACTUS FOREST DRIVE AT OLD SPANISH TRAIL
LEFT TURN LANE (4CFLTL)**

**FEDERAL PROJECT NO. HSIP PPM-0(245)D
ADOT TRACS NO. SH638 01D**

TUCSON, ARIZONA

October 26, 2016

**Pima County Procurement Department
Design & Construction Division
130 West Congress Street, Third Floor
Tucson, Arizona 85701
(520) 724-3731 / Fax (520) 724-4434**

Solicitation No. 233336

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DESIGN ENGINEERING SERVICES FOR: CACTUS FOREST DRIVE AT OLD SPANISH TRAIL LEFT TURN LANE (4CFLTL)

FEDERAL PROJECT NO. HSIP PPM-0(245)D ADOT TRACS NO. SH638 01D

Pima County is seeking Statements of Qualifications (SOQ) from qualified firms to provide Design Engineering Services for the following improvement project.

The Cactus Forest Drive at Old Spanish Trail Left Turn Lane project is a Pima County Department of Transportation (PCDOT) roadway improvement project.

This project consists of the design for construction of a southbound left-turn lane on Old Spanish Trail at Cactus Forest Drive. Items included in this scope are: repaving and symmetric widening of Old Spanish Trail from approximately 200' south of the intersection to approximately 400' north of the intersection by approximately 5' on each side where needed, minor embankment widening on the west side of Old Spanish Trail, installation of signing and striping on Old Spanish Trail as needed for roadway changes, repaving of two private driveways within the project limits, repaving of the connection of Pantano Trail to Old Spanish Trail, and replacement of culverts crossing private driveways. The new cross section of Old Spanish Trail will be 5' wide shoulders, 11' wide through lanes, and a 12' wide left turn lane.

This project is funded partially by U.S. Department of Transportation Federal Highway Administration (FHWA) Highway Safety Improvement Program (HSIP) Funds.

Respondents interested in providing design services for this project must be prequalified at the time of submittal with the Arizona Department of Transportation (ADOT) Engineering Consultants Section (ECS). For information concerning prequalification, please visit: <https://www.azdot.gov/business/engineering-consultants/consultant-prequalification>.

Respondents will be subject to ADOT Registration and Disadvantaged Business Enterprise (DBE) requirements and reporting. Please review these requirements carefully. A minimum goal of 9.28% has been established for participation by DBEs as a percentage of the total amount of the negotiated contract value including any amendments thereto.

The County intends to award a single Contract to the firm ranked highest as a result of evaluation of demonstrated competence and qualifications for these services and with which the County is able to negotiate a satisfactory Contract in accordance with 23 USC 112 and 23 CFR 172.

Information regarding the submittal requirements of this Solicitation for Qualifications (SFQ) may be obtained at the Design and Construction Division of the Procurement Department located at 130 W. Congress Street, 3rd Floor, Tucson, AZ, 85701. Contact Ms. Christy Bustillos regarding documents at (520) 724-8414, FAX: (520) 724-4434; Email: christy.bustillos@pima.gov. The entire information package can be downloaded from the Pima County website: <http://www.co.pima.az.us/procure/ifbrfp-dc.htm>.

Pima County reserves the right to reject any and all qualification statements or withhold the award for any reason.

SOQ DUE DATE/TIME: **November 18, 2016, at or before 4:00 PM Local Tucson Time**
LOCATION: Pima County Procurement Department, 130 W. Congress Street, 3rd Floor, Tucson, AZ

PRE-SUBMITTAL MEETING: **November 4, 2016, 10:00 AM Local Tucson Time**
LOCATION: Pima County Procurement Department, 130 W. Congress Street, 3rd Floor, Tucson, AZ

DIRECT QUESTIONS IN WRITING TO: Matt Sage, Commodity / Contracts Officer
Fax: 520-724-4434 / E-mail: Matthew.Sage@pima.gov

PUBLISH: **The Daily Territorial: October 26, 27, 28, and 31, 2016**
Arizona Daily Star: October 26 and November 9, 2016

Pima County One Stop often has design professional and administrative staff, managers, and experienced construction supervisors and workers available for immediate hire. Call (520) 243-6700 or contact One Stop at <http://webcms.pima.gov/cms/one.aspx?portalId=169&pageId=28947>

I - GENERAL INFORMATION

1. **SCOPE OF SERVICES:** Pima County is seeking Statements of Qualifications (SOQ) from qualified firms to provide Design Engineering Services for the following improvement project.

The Cactus Forest Drive at Old Spanish Trail Left Turn Lane project is a Pima County Department of Transportation (PCDOT) roadway improvement project.

This project consists of the design for construction of a southbound left-turn lane on Old Spanish Trail at Cactus Forest Drive. Items included in this scope are: repaving and symmetric widening of Old Spanish Trail from approximately 200' south of the intersection to approximately 400' north of the intersection by approximately 5' on each side where needed, minor embankment widening on the west side of Old Spanish Trail, installation of signing and striping on Old Spanish Trail as needed for roadway changes, repaving of two private driveways within the project limits, repaving of the connection of Pantano Trail to Old Spanish Trail, and replacement of culverts crossing private driveways. The new cross section of Old Spanish Trail will be 5' wide shoulders, 11' wide through lanes, and a 12' wide left turn lane.

A complete description of CONSULTANT's required professional services for the project are detailed in **Exhibit "A", Scope of Services** of the Sample Contract included herein as **Attachment "3"**.

The County intends to award a single Contract to the firm ranked highest as a result of evaluation of demonstrated competence and qualifications for these services and with which the County is able to negotiate a satisfactory Contract.

This project is funded partially by U.S. Department of Transportation Federal Highway Administration (FHWA) Highway Safety Improvement Program (HSIP) Funds for which Pima County is a LPA/Subrecipient.

2. **CONFIDENTIALITY AND DISCLOSURE:** Responses to this solicitation shall be considered privileged communications as to technical, financial, and institutional content until award of the Contract. Until that time, only the names of the firms on the short list may be disclosed. In accordance with that section, limited material may be disclosed after award of the Contract; after Contract execution, all material is publicly available. **Any material that you consider to be trade secret or proprietary must be clearly identified and marked. The County must agree with your claim of confidentiality before any material may be withheld from disclosure. The County has initiated a policy on confidential information that is reflected in the Public Information article of the Sample Contract included in Section III, Attachment "3". Respondents should familiarize themselves with that provision.**
3. **INTENT TO RESPOND.** Firms that intend to submit SOQs should notify the COUNTY as soon as possible of their intent by email to Matthew.Sage@pima.gov.
4. **INQUIRIES / QUESTIONS.** Inquiries shall be written, preferably sent by email. All questions must be received no later than seven (7) calendar days in advance of the submittal due date. All questions regarding this SFQ shall be directed to the following **Point of Contact:**

Matt Sage – Commodities/Contracts Officer
Pima County Procurement Department, Design & Construction Division
130 W. Congress, 3rd Floor
Mail Stop DT-AB3-126
Tucson, AZ 85743
Matthew.Sage@pima.gov or Fax (520) 724-4434

Effective the date of the first advertisement of the Contract, no further contact is allowed with any Pima personnel concerning this project except for questions of an administrative or contractual nature that shall

be submitted in writing to the attention of the assigned Pima County's Commodity/Contracts Officer. This restriction is in effect until selection has been announced.

5. **CLARIFICATIONS / ADDENDA:** Any clarifications or interpretations of this Statement for Qualifications (SFQ) that materially affect or change the scope or intent will be issued via addenda and posted by the County on the County's web site (<http://www.co.pima.az.us/procure/ifbrfp-dc.htm>). Oral statements or clarifications not in writing shall be non-binding and without legal effect. The County will make an effort to notify respondents of the posting of addenda; however, it cannot guarantee that every potential respondent will be notified each time. Therefore, **it is the responsibility of all respondents to check the website periodically for addenda and to obtain this information in a timely manner.** Failure to include acknowledgment of all addenda may be cause for rejection of the SOQ. **No oral interpretations shall be made as to the meaning of any of the SFQ documents, or be effective to modify any of the provisions of the SFQ documents. Oral interpretations of the SFQ documents are not binding on the County.**
6. **ACCEPTANCE OF EVALUATION METHODOLOGY:** By submitting its SOQ in response to this SFQ, respondent acknowledges and accepts the evaluation process, the stated selection criteria and relative weight of the stated selection criteria, and that determination of the "most qualified" firm will require subjective judgments by the County.
7. **SAMPLE CONTRACT:** These SFQ documents contain a Sample Contract that the selected firm will enter into with the County. By submission of an SOQ, each Firm will be certifying to the County that the Sample Contract is acceptable as written, unless exceptions are taken and specific alternate language proposed. The County may consider proposed changes and negotiate terms or conditions if deemed in the interest of the County. However, the County reserves the right to reject any submission that takes exceptions or proposes alternate language unacceptable to the County.
8. **PRE-SUBMITAL MEETING:** The date and time of a pre-submittal meeting, if applicable, is indicated on the Notice of Solicitation for Qualifications page of this document. The purpose of this meeting will be to clarify the contents of this solicitation in order to prevent any misunderstandings of County's position. Any questions regarding this solicitation should be presented to County at this meeting. This facility is wheelchair accessible. Upon request, ten (10) working days prior to bid opening, a signer will be provided for the hearing impaired.
9. **DUE DATE AND LOCATION FOR SUBMISSION:** Submittals must be received and time stamped at the Procurement Department, Design & Construction Division, 130 W. Congress Street, 3rd Floor, at or before the time and date indicated on the Notice of Solicitation for Qualifications page of this document. Late submittals will NOT be accepted.
10. **SUBMITTAL:** Respondents shall submit one (1) hardcopy original, four (4) hardcopies, and one (1) electronic version in a single file format of their Statement of Qualifications as further described in the Required Submittal Information and Evaluation Criteria Section of this document. The SOQs shall be delivered in a sealed envelope and clearly marked with the Firm Name, Name and Number of the SFQ, Due Date, and Time addressed to: Pima County Procurement Department, Design & Construction Division, Attn: Matt Sage, Commodity/Contracts Officer, 130 W. Congress Street, 3rd Floor, Tucson, AZ 85701.

SOQs received after the due date and time as noted on the Notice of Solicitation for Qualifications page of this document will be returned to the respondent unopened. No late submittals of SOQs will be accepted. The County will not acknowledge or receive SOQs that are delivered by telephone, facsimile (fax), or electronic mail (e-mail). Properly submitted SOQs will not be returned to respondents. Failure to follow SFQ submittal guidelines and instructions shall result in the SOQ rejection.

11. **CONSULTANT SELECTION PROCESS:**
- A. The evaluation of the SOQs shall be based on the requirements described in this SFQ. All properly submitted responsive SOQs will be evaluated, and ranked according to the stated selection criteria and relative weight of the stated selection criteria by the selection committee. SOQs shall not include any information regarding respondent's fees, pricing, person-hours or other cost information.
 - B. A "Consultant Selection Committee" will be comprised of Representatives from Pima County Department of Transportation. A Contracts Officer from the Pima County Procurement Department, Design & Construction Division will act as the non-scoring Chair of the selection committee.
 - C. The County does not intend to conduct interviews, but reserves the right to short-list firms and conduct interviews if determined in the best interest of the County.
 - D. The County intends to enter into negotiations for these services with the top ranked and recommended firm on the final list, which shall include consideration of compensation and other Contract terms that the County determines to be fair and reasonable to the County. If an agreement satisfactory to the County cannot be reached with the top ranked and recommended firm, the County intends to formally terminate negotiations with that firm and undertake negotiations with the next highest ranked and recommended firm on the final list in sequence until an agreement is reached or a determination is made to reject all firms on the final list. Following successful negotiation, a Contract will be recommended for award with the selected firm.
 - E. The Department will make an award recommendation to the Procurement Director based on the evaluation scores and successful negotiation of a Contract for services. The recommendation will be posted to the Pima County Procurement website at <http://pima.gov/procure/awards/> at least five (5) business days prior to the scheduled date for award. It is the responsibility of the respondents to check the website to obtain the recommendation. Selection of CONSULTANT shall be at the discretion of the County and the County reserves the right to reject any or all SOQ's.
12. **SELECTION SCHEDULE:** The following represents anticipated milestone dates for the selection. Any known conflicts with the dates such as observed holidays, scheduled vacations, trade seminars, etc. that could interfere with your participation in the selection should be made known to the Contracts Officer immediately.
- | | |
|--|------------------------------|
| Pre-Submittal Meeting: | November 4, 2016; 10:00 a.m. |
| Due Date Statements of Qualifications: | November 18, 2016; 4:00 p.m. |
| Award: | Estimated December 2016 |
| Fee Negotiations: | Estimated December 2016 |
| Final Contract and NTP: | Estimated January 2017 |
13. **COUNTY'S RESERVATION OF RIGHTS:** The County may evaluate the SOQs based on the anticipated completion of all or any portion of the Project. The County reserves the right to divide the Project into multiple parts, to reject any and all SOQs and re-solicit for new SOQs, or to reject any and all proposals and temporarily or permanently abandon the SFQ. County makes no representations, written or oral, that it will enter into any form of agreement with any respondent to this SFQ for any project and no such representation is intended or should be construed by the issuance of this SFQ.
14. **COST OF SUBMITTAL PREPARATION:** This SFQ does not commit County to pay any costs incurred in the preparation, presentation or return of submittal including interview time.
15. **WAIVER OF CLAIMS:** Each respondent in submitting an SOQ is deemed to have waived any claims for damage by reason of the selection of another submission and/or the rejection of said respondent's submission.

16. **ARIZONA UNIFIED TRANSPORTATION REGISTRATION CERTIFICATION SYSTEM (AZ UTRACS) ONLINE VENDOR REGISTRATION:** Pursuant to 49 CFR 26.11 (c) (2), US Department of Transportation (USDOT) requires Arizona Department of Transportation (ADOT) to collect demographic information on all firms who seek to work on federally-assisted contracts, including prime Consultants, subconsultants, DBEs, and Small Business Concern (SBC) firms. ADOT's primary method of collecting this data is through the AZ UTRACS, a centralized database of companies doing business for ADOT/County on federal-funded projects.

All prime Consultants submitting SOQs to Pima County shall be registered as a vendor in AZ UTRACS. Prime Consultants submitting SOQs must register or update their firm's AZ UTRACS vendor registration at <http://adot.dbesystem.com>.

Noncompliance or failure of Prime Consultants to include their AZ UTRACS vendor registration number in the **SOQ Bidders/Proposers List (See Link in Section II)**, or maintain a current (non-expired) AZ UTRACS vendor registration number, shall result in the SOQ rejection.

17. **ELIGIBLE RESPONDENTS:** Respondents interested in providing design services for this project must be prequalified at the time of submittal with the ADOT Engineering Consultants Section (ECS). For information concerning prequalification, please visit: <https://www.azdot.gov/business/engineering-consultants/consultant-prequalification>. Only individual firms or lawfully formed business organizations may apply. Failure of a firm to be registered with the Arizona Corporation Commission and AZ UTRACS and prequalified with ECS at the time of submittal will be cause for rejection of the SOQ. (This does not preclude a respondent from using subconsultants.) The County will contract only with the individual firm or formal organization that submits an SOQ. It is the Prime Consultant's responsibility to verify that all subconsultants in the SOQ have the proper AZ licenses/registrations and DBE registrations at the time of the submittal, if applicable. Subconsultants are also required to be registered in AZ UTRACS at the time of the submittal.
18. **JOINT VENTURES:** Respondents that submit an SOQ as a Joint Venture must include a copy of the Joint Venture Agreement at the time of submittal. Respondent's Statement of Interest and Availability to Undertake the Project must be executed by the Joint Venture Partners or by one Joint Venture Partner with a letter of authorization from the other Joint Venture Partner(s).
19. **SUSPENSION / DEBARMENT:** By submitting its SOQ in response to this SFQ, respondent is certifying that neither it nor any of its principals are debarred or suspended or under consideration for suspension or debarment by any Federal, State or Local government or agency. If a respondent is not able to certify, the respondent must submit a letter that identifies the agency involved and a contact and explains why respondent is suspended or debarred or being considered for suspension or debarment.

CONSULTANT shall not have, nor shall subcontract at any tier to any firm, individual or other entity reported to have, an active exclusion in the System for Award Management (SAM) at <https://www.sam.gov/portal/public/SAM>.

The County Board of Supervisors reserves the right to reject the SOQ of any persons or corporations who have previously defaulted on any Contract with Pima County or who have engaged in conduct that constitutes a cause for debarment or suspension as set forth in Pima County Code Chapter 11.28 and 11.32.

20. **PROTESTS:** The Pima County protest procedures are in Chapter 11.20 of the Pima County Procurement Code, available through <http://www.pima.gov/cob/code/>. The five-day period to file a protest of the award will be measured from the date the Notice of Recommendation for Award is posted on the Pima County Procurement website at <http://www.pima.gov/procure/awards/> without regard to whether individual notices were issued. It is the responsibility of bidders and offerors to check the website.

21. **PIMA COUNTY ONE STOP SYSTEM:** Pima County One Stop often has professional and administrative staff, managers, and experienced construction supervisors and workers available for immediate hire. Call (520) 243-6700 or contact One Stop at <http://webcms.pima.gov/cms/one.aspx?portalId=169&pageId=18397>.
22. **VENDOR REGISTRATION:** Pima County's internet-based vendor registration system is VSS (Vendor Self Service Portal). This system allows Vendors to create and maintain their own Vendor record online using a standard internet browser. The internet link for Pima County's Vendor Registration is located on the Procurement Department website at www.pima.gov/procure. The selected Consultant must register in Pima County's VSS.
23. **NON-COLLUSION:** Each respondent, by submitting an SOQ, is certifying that the respondent has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free and open competition in connection with this Solicitation.
24. **TERMINOLOGY:** Please note that ADOT and FHWA refer to the requirements of the "Contractor" in general terms. The requirements referred to in the documents contained in this Solicitation are pertinent to the "CONSULTANT" awarded a Contract resulting from this Solicitation.

End of Section I – General Information

II – DISADVANTAGED BUSINESS ENTERPRISES PROGRAM

Disadvantaged Business Enterprises

ADOT, also referred to as “Department” or “State,” has established a Disadvantaged Business Enterprises (DBE) Program in accordance with the regulations of the U.S. Department of Transportation (USDOT), [49 CFR Part 26](#). ADOT has received federal financial assistance from the USDOT and as a condition of receiving this assistance, ADOT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of ADOT to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded Contracts. It is also ADOT’s policy to:

1. Ensure nondiscrimination in the award and administration of federally-funded Contracts;
2. Create a level playing field on which DBEs can compete fairly for federally-funded Contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. Help remove barriers to the participation of DBEs in federally-funded Contracts;
6. Assist in the development of firms that can compete successfully in the marketplace; and
7. Promote the use of DBEs in all types of federally-assisted Contracts and procurement activities

The Federal regulations require a recipient of federal highway funding to implement an approved DBE Program that consists of establishing a statewide DBE utilization goal and using race-neutral means to the maximum feasible extent to achieve the goal. Where race-neutral measures prove inadequate to achieve the goal, the State is required to use race-conscious measures, such as a DBE participation goal for individual Contracts.

The Department has established an overall annual goal for DBE participation on Federal-aid Contracts. The Department intends for the goal to be met with a combination of race-conscious efforts and race-neutral efforts. Race-conscious participation occurs where the Consultant uses a percentage of DBEs to meet a contract-specified goal. Race-neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses.

ADOT is required to collect data on all DBE participation to report to FHWA, whether or not there is a stated DBE goal on the Contract. Prime Consultants should refer to **Exhibit “D”** of the Contract provisions for information on DBE reporting requirements. Accurate reporting is needed to track DBE participation.

A DBE goal of 9.28% has been established on this Contract. Prime Consultants are encouraged to obtain DBE participation above and beyond the goal on this Contract. The DBE goal attainment will be monitored on a Contract Modification by Contract Modification basis to help ensure that the overall DBE goal is met on the Contract.

Prime Consultants shall indicate their commitment to meeting the Contract DBE goal by signing the *SOQ Proposal Certification Form* found in **Section III**, by acknowledging the DBE Information Section in *Consultant Information Page (CIP)*, and completing the *DBE Goal Commitment (Assurance) Form (Section III, Attachment “1”)* when submitting the SOQ.

DBE Consultants and Subconsultants must be certified for the services proposed in the SOQ submittal. DBE Consultants and Subconsultants performing work for services for which they are not certified will not be counted towards the DBE goal. Furthermore, proposing DBE Consultant, or Small Business Concern (SBC) Consultant or Subconsultants to provide services they are not certified in may negatively impact the prime Consultant’s score. To confirm the firm’s DBE certification and work categories the firm is certified to perform, visit ADOT *Arizona Unified Transportation Registration and Certification System (AZ UTRACS)* or contact ADOT Business Engagement and Compliance Office (BECO) at (602) 712-7761.

Prime Consultants are **required to register** their firms in [AZ UTRACS](#). Prime Consultants shall specify the anticipated role of **all** certified DBE firms who will participate as Subconsultants in this Contract and shall be noted in *Consultant Information Page*, *Subconsultants* subsection. The DBE Subconsultants' experience and their role in the Contract shall also be explained in SOQ **Section III**.

The selected prime Consultant shall submit the *DBE Participation Affidavit*, link found in **SFQ Section II**, with initial Cost Proposal certifying the DBE goal shall be met on the Contract and each Contract Modification or Good Faith Efforts shall be demonstrated.

After the Contract has been executed, the selected prime Consultant is required to submit the following documents with every Contract Modification:

1. Certification that the prime Consultant shall meet or exceed the established DBE goal stated in the SOQ and Contract by providing the following documents:
 - a. A **Consultant Intended DBE Participation Affidavit**, if the prime Consultant is a DBE firm. The link to the form is provided in **SFQ Section II** of the SOQ Package and shall be submitted with every Contract Modification.

OR

 - b. A **Consultant Intended DBE Participation Affidavit** and a completed **Subconsultant Intended DBE Participation Affidavit** for each DBE Subconsultant. The link to the forms is provided in **SFQ Section II** of the SOQ Package and shall be submitted with every Contract Modification.

OR
2. Certification that the prime Consultant has made an adequate good faith effort to meet the goal, even if it did not succeed in obtaining enough DBE participation to do so. Document the good faith efforts on the **Consultant Certification of Good Faith Efforts** form. The link to the instructions is provided in **SFQ Section II** and shall be submitted with every Contract Modification. Also see Appendix A.1 to Part 26 of UTC (Section III, Exhibit "C" of Attachment 3).

THE CONTRACT MODIFICATIONS WILL NOT BE EXECUTED IF ONE OF THE ABOVE CONDITIONS ARE NOT MET AND/OR A CONSULTANT FAILS TO SUBMIT THE REQUIRED DBE PARTICIPATION FORMS WITH EACH MODIFICATION.

ADOT Business Engagement and Compliance Office (BECO) will make the determination whether the prime Consultant has made a satisfactory good faith effort to secure certified DBEs to meet the advertised Contract goal in accordance with 49 CFR Part 26. If BECO determines that the prime Consultant has not met the DBE goal, or has not made an adequate good faith effort to meet the DBE goal, ADOT will terminate the Contract negotiations with the prime Consultant and will negotiate with the next highest ranked Prime Consultant. If the prime Consultant wishes to dispute the Good Faith Effort determination, the prime Consultant may escalate the decision according to the levels outlined in ARTICLE 27 (Disputes) of the Contract. The BECO will be represented at each escalation level with the goal of resolving the matter at the lowest possible level. **The decision of the BECO is final.**

Prime Consultants shall submit a payment report on a **monthly** basis, per UTC Section 4.9 (Payment Reports/Invoices) of the Contract, indicating the amounts earned by and paid to all Subconsultants working on the Contract in the manner detailed in the Progress Payment Report (PPR) format for the applicable Contract type. All DBE and non-DBE Subconsultants, lower-tier Subconsultants and direct expense vendors shall confirm their payments received through BECO online DBE System. The prime Consultant may credit second-tier subcontracts issued to DBEs by non-DBE Subconsultants. Any second-tier subcontract to a DBE used to meet the goal shall meet the requirements of a first-tier DBE subcontract.

Assurances of Non-Discrimination

The Consultant, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Consultant 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 State deems appropriate, which may include, but not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages;
- (4) Disqualifying the consultant from submitting SOQs, or any other forms of proposals, as non-responsible;
- (5) Cancellation, termination, or suspension of the Contract, in whole or in part.

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

Prime Consultants are **required to register** their firms in [AZ UTRACS](#).

Before the first Payment Report/Invoice is submitted to COUNTY for processing, the Consultant is required to logon to the BECO online DBE System <https://adot.dbesystem.com> and enter the name, contact information, and subcontract budget amounts for all DBE and non-DBE Subconsultants and Direct Expense vendors performing any work on the project.

Certification of Final DBE Payments

The Consultant's achievement of DBE participation is measured by actual payments made to the DBEs. The consultant shall submit the "Certification of Final DBE Payments" form for each DBE firm working on the Contract. This form shall be signed by the consultant and the relevant DBE, and submitted to ECS no later than 30 days after the DBE completes its work.

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

The Consultant will not be released from the obligations of the Contract until the "Certification of Final DBE Payments" forms are received and deemed acceptable by ECS and BECO.

Fostering Small Business Participation

[49 CFR Part 26.39](#) also requires that ADOT's DBE Program includes an element to incorporate contracting requirements to facilitate participation by SBCs in contract procurements for prime Consultants and Subconsultants. SBCs are for-profit businesses registered to do businesses in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

While the SBC component of the DBE Program does not require utilization goals on projects, **ADOT strongly encourages prime Consultants to utilize small businesses on their Contracts** that are registered in AZ UTRACS, in addition to DBE meeting the certification requirement. Visit AZ UTRACS at <https://adot.dbesystem.com/> to search for certified DBEs and registered SBCs that can be used on this Contract.

Links for DBE Program and applicable forms

DBE Program Information

To review the DBE Program Information, use the following link:

[https://azdot.gov/business/engineering-consultants/DisadvantagedBusinessEnterprise\(DBE\)Program](https://azdot.gov/business/engineering-consultants/DisadvantagedBusinessEnterprise(DBE)Program)

Arizona Unified Transportation Registration and Certification System (AZ UTRACS)

To confirm DBE certification and work certified to perform, use the following link:

<https://utracs.azdot.gov/Search>

Online Bidders/Proposers List

To submit the online Bidders/Proposers List, use the following link:

<https://utracs.azdot.gov/BiddersListInfo/>

Consultant Intended DBE Participation Affidavit

To review the Consultant Intended DBE Participation Affidavit, use the following link:

<https://azdot.gov/docs/default-source/beco-library/3206ps-dbe-intended-participation-affidavit-consultant.pdf?sfvrsn=2>

Subconsultant Intended DBE Participation Affidavit

To review the Subconsultant Intended DBE Participation Affidavit, use the following link:

<https://azdot.gov/docs/default-source/beco-library/3205ps-dbe-affidavits-subconsultant.pdf?sfvrsn=2>

Consultant Certification of Good Faith Efforts

To review the Consultant Certification of Good Faith Efforts, use the following link:

<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=85>

Certificate of Final Payments to DBE Firms

<http://azdot.gov/docs/default-source/beco-library/3210ps-dbe-certification-of-final-payment-pd-lpa-fillable.pdf?sfvrsn=6>

Add or Remove Subconsultant Request Form

[http://azdot.gov/docs/default-source/beco-library/3208ps-dbe-substitution-or-termination-request-\(new\).pdf?sfvrsn=4](http://azdot.gov/docs/default-source/beco-library/3208ps-dbe-substitution-or-termination-request-(new).pdf?sfvrsn=4)

<http://azdot.gov/docs/default-source/default-document-library/ecs-add-remove-sub-request-form-9-9-16.pdf>

End of Section II – Disadvantaged Business Enterprises Program

III – REQUIRED SUBMITTAL INFORMATION AND EVALUATION CRITERIA

Responses to the SFQ should be bound on the left side and have front and back covers. The submittal pages shall not exceed 8.5 X 11 inches. 11 x 17 inch sheets may be used as required to depict organizational charts, prior project experience tables, or project schedule diagrams only, and shall be folded to 8 ½ x 11-inches. The copy marked “Original” shall be printed single sided only. The additional copies may be duplexed at Respondent’s discretion. Additional attachments beyond those requested will count in the overall page count. Responses should be kept concise, and it is suggested that SOQs not exceed **Ten (10)** pages in length, not including the front and back covers, table of contents, Respondent’s Statement of Interest and Availability to Undertake the Project, indexes, joint venture agreements, Online Bidders/Proposers List (See Link in Section II), or resumes. Required DBE forms do not count toward the suggested page limit. Clear, concise responses that are under the suggested maximum page limit are preferred to unclear responses that use the maximum number of pages. Resumes shall each be no more than two pages and included in an Appendix at the end of the SOQ. Failure to follow the outline of required information or submission of material other than that requested shall result in rejection of the proposal.

SOQs shall be submitted according to Section I – General Information, Paragraph 10 – “Submittal”.

Evaluation Criteria and Relative Weighting of Evaluation Criteria

SECTION	TOTAL POINTS
1. Respondent’s Statement of Interest and Availability to Undertake the Project	N/A
2.A. Project Team Capabilities	40 Points
2.B. Specific Project Approach	45 Points
2.C. Past Performance Evaluations	15 Points
2.D. Professionalism of SOQ	10 Points
Appendix I (resumes only)	
TOTAL PER SOQ	100 POINTS

The Remainder of this Page is Intentionally Left Blank

1. Consultant Information Page: Statement of Interest / SOQ Proposal Certification

Consultant Company Name:	
Street Address:	
Town, State, Zip Code:	
Phone Number:	
Fax Number:	
City/State of Corporate Headquarters:	
Point-of-Contact for Firm: Title: <i>(provide signature below)</i> Email:	
Key Contact Person who will manage this Contract:	

- List and describe availability and commitment of the Respondent, its Principal(s) and assigned professionals to undertake the Project and include number of Principal(s) current and valid Professional Registration in the State of Arizona.
- Provide a statement regarding acknowledgement of all issued addenda, if any, and agreement or exception to the terms contained in the attached Sample Contract. If exceptions are taken, propose specific alternate language. (Exceptions may be noted in an Appendix if desired which will not count toward the suggested page limitation.)
- Provide a statement that Consultant and any Subconsultant currently maintains insurance in at least the minimum amounts of coverage as required by this Contract, and that Pima County, the State of Arizona, ADOT and FHWA will be *endorsed* as additional insured's on General Commercial Liability, Business Automobile Liability and Aircraft Liability (if applicable) policies and will provide a Waiver of Subrogation in favor of Pima County, State of Arizona, ADOT and FHWA on the General Commercial Liability, Business Automobile Liability and Aircraft Liability (if applicable) policies. See requirements in the Sample Contract.
- Respondents interested in providing design services for this project must be prequalified at the time of submittal with the Arizona Department of Transportation (ADOT) Engineering Consultants Section (ECS). Provide a statement verifying prequalification. For information concerning prequalification, visit: <https://www.azdot.gov/business/engineering-consultants/consultant-prequalification>.
- Prime Consultants and its Subconsultants are **required to register** their firms in [AZ UTRACS](#). Specify the experience and anticipated role of **all** certified DBE firms who will participate as Subconsultants in this Contract.

Furthermore, please read the fifteen (15) statements below. The statements are to ensure Consultants are aware of and in agreement with Federal, State and County guidelines related to the award of this Contract. Failure to sign and submit this Consultant Information Page / Statement of Interest and Availability in the SOQ and submit with the SOQ proposal will result in the SOQ proposal being rejected. Submission of the SOQ by the Consultant certifies that to the best of its knowledge:

1. The Consultant and its Subconsultants have not engaged in collusion with respect to the Contract under consideration.
2. The Consultant, its principals and Subconsultants have not been suspended or debarred from doing business with any government entity.
3. The Consultant shall have the proper Arizona license(s) and registration(s) for services to be performed under this Contract. Furthermore, the Consultant shall ensure that all Subconsultants have the proper Arizona license(s) and registration(s) for services to be performed under this Contract.
4. The Consultant's signature on any SOQ proposal or Contract constitutes an authorization to COUNTY to ascertain the eligibility of the Consultant, its principals and Subconsultants to enter into a Contract with the COUNTY.
5. The Consultant's Project Team members are employed by the Consultant on the date of submittal.
6. All information and statements written in the proposal are true and accurate and that COUNTY reserves the right to investigate, as deemed appropriate, to verify information contained in proposals.
7. Key members of the Project Team, including Subconsultants, are currently licensed to provide the required services as requested in the SOQ package.
8. All members of the Project Team who are former County employees did not have or provide information that gives the Consultant a competitive advantage; and either (1) concluded their employment with County at least 12 months before the date of the SOQ or (2) have not made any material decisions about this project while employed by County.
9. Work, equating **at least 51%** of the Contract value, shall be completed by the Consultant unless otherwise specified in the SOQ or Contract.
10. No Federally appropriated funds have been paid or shall be paid, by or on behalf of the Consultant for the purpose of lobbying.
11. The Consultant understands that it is required to have a compliant accounting system, in accordance with Generally Accepted Accounting Principles (GAAP), Federal Acquisition Regulation (FAR) of Title 48, Code of Federal Regulations (CFR)-Part 31, applicable Cost Accounting Standards (CAS), and ADOT Advance Agreement Guideline. Furthermore, Consultant will be required to submit the Certificate of Final Indirect Costs Form for all indirect cost rate proposals submitted by OH based consultants and subconsultants as required by 23 CFR 172.11 (c) (3)(iii).
12. If project is funded with Federal Aid funds, the Consultant affirmatively ensures that in any subcontract entered into pursuant to this advertisement, disadvantaged business enterprises shall be afforded full and fair opportunity to submit proposals/bids in response to this invitation and shall not be discriminated against on the grounds of race, color, or national origin in consideration for an award, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation.
13. The Consultant shall utilize all Project Team members, subconsultants and DBE firms, if applicable, submitted in the SOQ, and shall not add other Project Team members or subconsultants, unless the Consultant has received prior written approval from COUNTY.
14. The Consultant shall either meet its DBE goal commitment and any other DBE commitments or make Good Faith Efforts to meet the DBE goal commitments as stated in its SOQ proposal or Cost Proposal and shall report on a timely basis its DBE utilization as detailed in the Contract.
15. If selected, the Consultant is committed to satisfactorily carry out the Consultant's commitments as detailed in the Contract and its SOQ proposal.

Signator certifies that the information provided in this Statement of Qualifications is current and accurate to the best of the Signator's knowledge. By signing this statement of interest and availability, Signator represents that the firm and assembled team have the financial resources and staff availability to complete this project within the required schedule.

 Signature

 Date

 Print Name

 Title

2. QUALIFICATIONS AND EXPERIENCE

In order to ensure that the constructed improvements meet the needs of the County, the public and our partners and stakeholders, it is essential that the project team possess the ability to:

- Instill a teamwork-oriented approach with collaborative decision making supported by facts and data, and facilitated to meet each partner/stakeholder's needs.
- Provide a thorough and comprehensive approach to Quality Control in order to ensure that mistakes are prevented and caught prior to Departmental reviews.
- Be proactive in risk management; develop and manage project costs and schedules reflecting known and unknown items and tasks; and incorporate discovered contingencies as project progresses.
- Develop and manage good ideas.
- Build in value engineering as a common way of developing the design.
- Understand the interrelationship between the design and environmental investigation and assessment to ensure that those major activities inform one another so that the overall design meets the criteria of best overall design, with least overall environmental impact.
- Work closely with, help educate, and inform the public and at the same time segregate wants from needs.

With those key attributes in mind, the following criteria will be used in the evaluation of firms. Address each item in the order presented. The statement of qualifications shall include brief narratives describing the firm's qualifications and experience as it relates to each criterion.

A. Project Team Capabilities (45 points)

1. Introduce the team members (at all key professional levels) and identify the roles they will perform in the initial design, development and approval of required documents, and final design for the project. Identify and describe the unique qualifications of the team members, such as civil engineering areas of specialty, environmental science, archeology, etc. Describe the level of experience members of the team have working together as a team. Make special note of expertise in team member experience on small, limited scope projects with a singular purpose and that are federally funded but locally managed. Demonstrate that key personnel assigned to the project possess current and valid State of Arizona professional registration in the discipline that corresponds to their team role. In Appendix I, submit resumes of project team's principals, project engineers, project managers, and sub-consultants stating certifications, training, and experience. Resumes shall be limited to 1-2 pages each, should be included in Appendix I, and will not count toward the suggested page limitation. **(20 points)**
2. Describe in detail the services provided, approach taken, and lessons learned on transportation projects similar to the type and scope of this project. Explain in detail how the experienced gained from these specific other or past projects will be applied to the proposed project. Provide a client reference list including client firm name, address, phone number, fax number, and e-mail address and a contact person. The County may contact these references as part of the evaluation of this criteria and/or criteria C. **(25 points)**

NOTE: Projects used as examples of work similar to these projects shall be clearly noted if the work was done by individuals while employed with other firms.

B. Specific Project Approach (45 points)

1. Briefly describe your understanding of the scope of work for this design effort. Describe how "scope creep" will be contained for this specific project and why, besides project budget, it is important to contain the scope? **(10 points)**

2. Briefly describe your understanding of the issues inherent in working on Right of Way that is adjacent to or partially owned by a federal agency. Give examples of previous projects if applicable. **(10 points)**
3. Coordination with both utilities and public involvement may impact project scope, delivery and cost. What utility or public involvement issues are specific to this project and what is your strategy to mitigate these issues? **(10 points)**
4. Describe the issues inherent in maintaining uninterrupted access to a facility, in this case Saguaro National Park, and your strategy to mitigate these issues? **(10 points)**
5. Provide a project development schedule. **(5 points)**

C. Past Performance Evaluation - References: (15 points)

1. Provide CONSULTANT Performance Inquiry form (Attachment 2) to **THREE (3)** references that can support your firm's qualifications.
2. Request those references to email or fax that form **DIRECTLY** back to Pima County Procurement Department, Design and Construction Division at Matthew.Sage@pima.gov or 520-724-4434 by the due date for the Solicitation, November 18, 2016.
3. References should be familiar with Respondent's work on these projects and be knowledgeable regarding Respondent's performance. It is Respondent's responsibility to follow-up with references to ensure they submit CONSULTANT Performance Inquiry form by the deadline. Late submittals will not be considered. References may be contacted for additional information.

D. Professionalism of written statement (a maximum of 10 points may be deducted)

All statements are expected to be prepared in a professional manner as a reflection of the firm's competency in attention to detail, document review process, and quality control. This includes organization, formatting, readability, accuracy of spelling and grammar, and adherence to the suggested page count limitation as stated herein. Evaluation points may be deducted for less than professional work.

3. Online Bidders/Proposers List (No Points)

In compliance with 49 CFR Part 26.11, ADOT requires contractors and consultants submitting a bid, proposal, or SOQ to work on a federally funded transportation project, to provide ADOT with a list of every firm who expressed interest in or submitted a bid or proposal to work on the project. Complete the Online Bidders/Proposers List (**See Link in Section II**). Once the Online Bidders/Proposers List is completed, the creator of the list will receive an e-mail verification which shall be submitted with SOQ response. (Not included in page count limitation).

4. DBE Goal Commitment (Assurance) Form (No Points)

Complete the DBE Goal Commitment (Assurance) Form (Attachment 1). The Consultant shall indicate if the established DBE Participation Goal will be met or if the established DBE Participation Goal cannot be met but Consultant has made good faith efforts to do so. (Not included in page count limitation).

5. SELECTION

The total score for selection criteria A--D above will be used to determine the final evaluation/ranking, with the highest ranked firm being recommended for award.

The County reserves the right to make such additional investigations as it deems necessary to establish the competence and financial stability of any Respondent.

End of Section III – Required Submittal Information and Evaluation Criteria

**ATTACHMENT 1 (1 PAGE)
DISADVANTAGED BUSINESS ENTERPRISES GOAL COMMITMENT (ASSURANCE)**



**PROFESSIONAL SERVICES
PROJECT SPECIFIC CONTRACT**

Disadvantaged Business Enterprise (DBE)
Goal Assurance

ADOT TRACS No.: _____ Agency Project/Contract No.: _____
Project Name: _____
Prime: _____ AZ UTRACS Vendor #: _____

The undersigned, fully cognizant of the requirements and of the goal established, hereby certifies that in the preparation of the proposal for the above stated federal aid project,

the Proposer will meet the established DBE goal or will make good faith efforts to meet the goal for the contract and that arrangements with certified DBEs have been made prior to the SOQ and/or cost proposal submission.

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

FAILURE TO AFFIRMATIVELY MAKE THIS DECLARATION/CERTIFICATION IN THE MANNER OUTLINED IN THE REQUEST FOR QUALIFICATIONS (RFQ) FURNISHED BY THE LPA/SUBRECIPIENT WILL CAUSE A PROPOSER'S SOQ TO BE CONSIDERED NON-RESPONSIVE.

(Name of Authorized Officer)

(Title)

(Authorized Officer Signature)

(Date)

**ATTACHMENT 2 (5 Pages)
CONSULTANT PERFORMANCE INQUIRY**



PIMA COUNTY PROCUREMENT DEPARTMENT
DESIGN AND CONSTRUCTION DIVISION
PHONE: 520-724-8414
FAX: 520-724-4434

CONSULTANT: _____

FOR: Design Engineering Services for Cactus Forest Drive at Old Spanish Trail – Left Turn Lane

PIMA COUNTY, ARIZONA IS CONSIDERING THE ABOVE CONSULTANT'S APPLICATION TO PROVIDE PROFESSIONAL SERVICES TO PIMA COUNTY FOR THE ABOVE-REFERENCED PROJECT. PLEASE RANK CONSULTANT'S PAST PERFORMANCE IN THE CATEGORIES INDICATED ON PAGE 2, USING THE CATEGORIES INDICATED ON PAGE 2 AND THE DEFINITIONS ON PAGES 3 – 6.

PLEASE FAX/EMAIL THIS SHEET AND YOUR COMPLETED QUESTIONNAIRE TO THE FOLLOWING *ON OR BEFORE November 18, 2016.* Any revised Submittal Due Date published by the County will supersede above schedule.

ATTENTION: Matt Sage
Pima County Procurement Department
Design and Construction Division
Email: Matthew.Sage@pima.gov
Fax: 520-724-4434

FIRM PROVIDING REFERENCE:

Name of Company: _____

Person Completing Reference: _____

Position: _____

Phone Number: _____ **Fax Number:** _____

Email Address: _____

**PIMA COUNTY PROCUREMENT DEPARTMENT
 CONSULTANT PERFORMANCE INQUIRY**

1. Name and Address of Consultant or Joint Venture	2. Total Contract Value:
	3. Contract Completion Date:
4. Type of Service Provided:	
5. Ratings: After commenting, score in column on the right, using 1 for unsatisfactory, 2 for marginal, 3 for satisfactory, 4 for very good, and 5 for exceptional.	
Technical Performance – Comments:	
Cost Control – Comments:	
Schedule/Timeliness – Comments:	
Business Relations – Comments:	
6. TOTAL SCORE: (sum of scores from above)	
7. Key personnel of Consultant:	
Name/Title:	Primary Responsibility:
Name/Title:	Primary Responsibility
Name/Title:	Primary Responsibility
8. Did CONSULTANT seem committed to customer satisfaction? ___Yes ___No Why?	
9. Were the services brought in on-time and on-budget? ___Yes ___No Why?	

CONSULTANT PERFORMANCE RATING GUIDELINES

1. Name and Address of Consultant or Joint Venture being evaluated. Identify the specific division being evaluated if there is more than one.
2. Total Contract value, including amendments or change orders.
3. Contract completion date. State date the project was completed. Describe any issues if the work was completed beyond the original expected completion date.
4. Type of Contract. Describe the purpose/services of the overall Contract.
5. In the comment area, provide rationale for the rating in accordance with the guidance attached to this Guideline. Indicate the performance rating in the far right column.
6. Add the scores and place in this box.
7. Identify Consultant or Joint Venture key personnel who played a major role in the performance rating. Identify their area of primary responsibility and comment on their performance during this contract phase. Do not list personnel not employed long enough to affect performance. In some cases, more than one individual may have served in a key position. List persons that had an effect on the ratings.
8. The reference person should indicate whether CONSULTANT seemed to be committed to customer satisfaction.
9. Indicate here if CONSULTANT completed the project within the time constraints and within the proposed budget. Amendments adding to the scope of work are considered within time and budget unless a time extension was needed for consultant to finish the original scope of work.

CONSULTANT PERFORMANCE RATING GUIDELINES

These are suggested guidelines for assigning ratings on a consultant’s compliance with the contract performance, cost, and schedule goals as specified in the Scope of Services. The rating for each category does not need to address all of the rating topics shown in the tables below.

Technical Performance (Quality of Product/Service)

- Exceptional**
 - Met all performance requirements / Experienced/knowledgeable staff retained on project throughout rating period
 - Minor problems / Highly effective corrective actions / Work and products greatly exceeded expectations
 - Excellent communication with client / Prompt follow up / Effective communications with outside agencies and public bodies
- Very Good**
 - Met all performance requirements / Most staff remained throughout rating period.
 - Minor problems / Effective corrective actions / Work and products above expectations
 - Good communication with client / Good follow up / Good communications with outside agencies and public bodies
- Satisfactory**
 - Met all performance requirements / Generally stable staff
 - Minor problems / Satisfactory corrective actions / Satisfactory work and products
 - Follow up and communications with client, outside agencies and public bodies met expectations
- Marginal**
 - Some performance requirements not met / Some key staff reassigned during rating period
 - Performance reflects serious problem / Ineffective corrective actions / Work and products below expectations / Poor Quality Assurance/Quality Control
 - Poor follow up and/or communications with client, outside agencies and public bodies
- Unsatisfactory**
 - Most performance requirements were not met / Most key staff reassigned during rating period
 - Recovery not likely / Work and products inadequate / No QA/QC evident
 - Follow up and/or communications with client, outside agencies and public bodies inadequate

Cost Control

- Exceptional**
 - Significantly reduced costs while meeting all contract requirements
 - Use of internal value engineering or other innovative management techniques
 - Quickly resolved cost issues / Effective corrective actions facilitated cost reductions
- Very Good**
 - Achieved overall cost reductions while meeting all contract requirements
 - Used innovative management techniques in cost control
 - Quickly resolved cost/price issues / Effective corrective actions to facilitate overall cost/price reductions
- Satisfactory**
 - Met overall cost/price estimates while meeting all contract requirements
- Marginal**
 - Do not meet cost/price estimates / Additional funds needed to complete some work
 - Poor corrective action plans / No innovative techniques to bring overall expenditures within limits
- Unsatisfactory**
 - Significant cost overruns
 - Ineffective or no corrective action plan

CONSULTANT PERFORMANCE RATING GUIDELINES

Schedule (Timeliness)

Exceptional

- Significantly exceeded delivery schedules / Many deliverables submitted ahead of schedule
- Quickly resolved delivery issues / Highly effective corrective actions
- Communications with client and/or outside agencies anticipated and made ahead of need / Effectively communicates schedule changes
- Effectively communicates unanticipated problems and impacts on project

Very Good

- On-Time deliveries / Some deliverables submitted ahead of schedule
- Quickly resolved delivery issues / Effective corrective actions
- Some communications with client and/or outside agencies made ahead of need / Communicates schedule changes
- Communicates unanticipated problems and impacts on project

Satisfactory

- On-time deliveries / On time communications
- Minor scheduling problems / Did not affect overall schedule

Marginal

- Some late deliveries / Some communications late causing some schedule delays
- Poor corrective actions / Delays in correcting actions causing some cost impact

Unsatisfactory

- Many late deliveries / Communications inadequate and source of many delays
- Significant cost impact / Loss of capability for Client
- Ineffective or No corrective actions

Business Relations

Exceptional

- Highly professional / Responsive / Proactive / Effective use of Partnering
- Prompt and accurate invoicing/construction invoice approvals
- Early and accurate shop drawing review / Accurate submittal logs
- Minor changes made without cost impact / Limited in number / Anticipated early

Very Good

- Professional / Responsive / Use of Partnering
- Accurate invoicing/construction invoice approvals/submittal logs
- Prompt and accurate shop drawing reviews
- Few change proposals submitted on a timely schedule

Satisfactory

- Professional / Reasonably responsive
- Adequate invoicing/construction invoice approvals/submittal logs
- Timely shop drawing reviews
- Reasonable number of change proposals submitted without impact on work effort

Marginal

- Less Professionalism and Responsiveness
- Low user satisfaction / No attempts to improve relations / Some subconsultant complaints
- Unnecessary change proposals / Untimely change proposal submittals

Unsatisfactory

- Delinquent responses / Lack of cooperative spirit
- Unsatisfied user / Unable to improve relations / Significant subconsultant complaints
- Change proposals to correct poor management
- Inappropriate and/or very untimely change proposals / Significant work effort impact

End of Attachment "2"

**ATTACHMENT 3
 SAMPLE CONTRACT**

PIMA COUNTY DEPARTMENT OF TRANSPORTATION	
PROJECT:	DESIGN ENGINEERING SERVICES FOR CACTUS FOREST DRIVE AT OLD SPANISH TRAIL – LEFT TURN LANE (4CFLTL)
CONSULTANT:	NAME ADDRESS CITY, STATE, ZIP
AMOUNT:	\$
FUNDING:	(STAMP HERE)

CONSULTANT SERVICES CONTRACT

THIS CONTRACT is entered into between Pima County, a body politic and corporate of the State of Arizona, hereinafter called COUNTY, and <CONSULTANT Name>, hereinafter called CONSULTANT, and collectively referred to as the Parties.

W I T N E S S E T H

WHEREAS, COUNTY requires the services of a CONSULTANT registered in the State of Arizona and qualified to provide design engineering services for Cactus Forest Drive at Old Spanish Trail – Left Turn Lane (Project); and

WHEREAS, CONSULTANT is willing, qualified, and properly registered within the State of Arizona to provide such services; and

WHEREAS, based on CONSULTANT's representations in response to Pima County Solicitation No. 233336, CONSULTANT was determined to be the most qualified for this Project; and

WHEREAS, CONSULTANT has proposed to perform the work at a price acceptable to COUNTY.

NOW, THEREFORE, in consideration of the foregoing recitals and other valuable and good consideration, the parties hereto agree as follows:

ARTICLE 1 – TERM AND EXTENSION/RENEWAL/CHANGES

This Contract, as approved by the Procurement Director, commences on [REDACTED], and terminates on [REDACTED], unless sooner terminated or further extended pursuant to the provisions of this Contract.

COUNTY has the option to extend the Contract termination date for purposes of project completion. Any modification or extension of the Contract termination date must be by formal written amendment executed by the Parties.

ARTICLE 2 – SCOPE OF SERVICES

CONSULTANT agrees to provide Design Engineering Services for the COUNTY as described in **EXHIBIT “A” – SCOPE OF SERVICES** (4 pages), an attachment to this Contract, and to complete such services within the term and value of this Contract as it may be modified in accordance with **ARTICLE 5**.

Amendments and changes to the Scope must be approved by the Board of Supervisors or the Procurement Director, as required by the Pima County Procurement Code, before the work under the amendment commences.

This Contract is funded by federal funds and is subject to the additional Federal requirements in **EXHIBIT “C” – Uniform Terms and Conditions Federal Contract Requirements (Project Specific Contract with Goals) (33 pages)**, hereinafter referred to as “UTC”, which is an attachment to and hereby made part of this Contract. For this Contract, the Federal Granting Agency is the Federal Highway Administration (FHWA) and the State Agency is the Arizona Department of Transportation (ADOT).

ARTICLE 3 - DEFINITIONS

Other Direct Costs. Other Direct Costs are those costs that can be specifically identified within this Contract, are required for performance of the Contract, and are actually incurred. This includes Subcontract or Subconsultant costs; reproduction, copy and printing costs; courier services; and similar costs specifically necessary for this Contract and approved by COUNTY.

Cost Plus Fixed Fee. The modified Cost Plus Fixed Fee (CPFF) is a compensation method that provides compensation to CONSULTANT for actual costs of Direct Labor, Indirect, and Other Direct Costs incurred up to a “not-to-exceed” amount, plus a fixed Fee amount for the successful performance of the work. The Fee amount may initially be determined as a percentage of the estimated not-to-exceed costs. Once negotiated, the Fee amount becomes fixed and does not vary with actual costs. The Fee may only be in accordance with **ARTICLE 4**.

Critical Path Method. The Critical Path Method (CPM) is a way of depicting the sequence of activities in a project, including interdependencies, and containing all activities needed for successful completion of the Work. Delay in the completion of activities on the critical path will extend the completion date.

Direct Labor Costs. Direct Labor Costs are the total number of allowable hours worked on the Project by each individual multiplied by the Labor Rate, identified in **EXHIBIT “B” – COMPENSATION SCHEDULE**.

Fee. Fee is the amount, independent of actual costs, that CONSULTANT is allowed for assuming risk and to stimulate efficient contract performance. Fee includes compensation to CONSULTANT for both profit and unallowable costs. Efficient cost control will allow CONSULTANT to earn a higher profit margin without adjustment of the fee amount. Conversely, inefficient cost control will result in a lower profit margin.

Float. Float is the number of days by which an activity not on the critical path in a CPM network may be delayed before it extends the completion date.

Labor Rates. Labor rates are the actual cost of salary paid to employees of CONSULTANT and identified in **EXHIBIT “B” – COMPENSATION SCHEDULE**.

Not to Exceed Cost. The Not to Exceed Cost for a task is the sum of the agreed Direct Labor costs, indirect costs, and other reimbursable costs of the task defined in the original Project Baseline. Actual Direct Labor costs may be invoiced based on hours worked, per discipline, per task, or a percent complete by task for the period. CONSULTANT assumes all risk for providing the requested task/deliverables at or below the original estimated cost, unless an equitable adjustment to the scope and/or fee are made by amendment to the Contract. Any costs incurred by CONSULTANT beyond the not-to-exceed amount identified which are not attributable to any change in the project baseline are unallowable. Unallowable costs are compensated through CONSULTANT’s fixed Fee.

Indirect Costs. Indirect costs are at the overhead rate identified in **EXHIBIT “B” – COMPENSATION SCHEDULE**.

Project Baseline. The agreed Contract scope of services, total Not-to-Exceed Cost plus Fixed-Fee (CPFF), the allocation thereof among Contract tasks, and the accompanying schedule and expectations/assumptions upon which the scope of services and schedule are based, collectively constitute the Project Baseline.

ARTICLE 4 – COMPENSATION AND PAYMENT

In consideration of the services specified in this Contract, COUNTY agrees to pay CONSULTANT on a modified Not-to-Exceed Cost plus Fixed Fee (CPFF) basis, not to exceed the total amount of this Contract. Cost is comprised of CONSULTANT's Direct Labor Costs, Indirect Costs and Other Direct Costs. CONSULTANT's fee will remain fixed and may be adjusted only as provided in **ARTICLE 5** and **ARTICLE 6**.

CONSULTANT's total CPFF will be allocated among the major tasks contemplated by this Contract in such manner that each major deliverable will have associated with it a not-to-exceed cost, plus a fixed fee amount, incorporated herein as **EXHIBIT "B" – COMPENSATION SCHEDULE (page(s))**. CONSULTANT may invoice monthly for the actual costs incurred plus a pro-rata portion of one-half (1/2) of the fee amount for each task. CONSULTANT will calculate actual costs based on actual hours spent, to which the agreed overhead rate may be applied, plus Other Direct Costs. Actual Costs may then be represented as percentage of the "not to exceed" cost amount associated with that task on CONSULTANT's invoice for billing purposes. Calculations and supporting data will be made available to COUNTY at any time, upon request. The cumulative payment for the actual costs of any task may not be more than the "not to exceed" cost amount associated with that task. Upon completion of a task, (including acceptance by COUNTY of all associated deliverables), COUNTY will pay the balance of the fee allocated to that task to CONSULTANT.

Hourly rates and all other rates included under this Contract will remain fixed throughout the term of the Contract. COUNTY may consider adjustments to rates in connection with any extensions of the Contract term.

The total of all payments to CONSULTANT for services provided under this Contract will not exceed **<DOLLAR AMOUNT OF CONTRACT (\$)>**.

Unless otherwise agreed, CONSULTANT will submit invoices monthly. All invoices will be accompanied by a narrative description of the work performed during the period covered by the invoice, time accounting information, and an allocation of all direct costs, including reimbursable costs and subconsultant charges, to the tasks identified in the Scope of Services for which those costs were incurred. The time accounting information should be sufficient to show the workers and hours worked by day for the period covered by the invoice. Subconsultant charges must be supported by appropriate documentation with each separate invoice submitted.

For the period of record retention required under **ARTICLE 25**, COUNTY reserves the right to question any payment made under this Article and to require reimbursement therefor by setoff or otherwise for payments determined to be improper or contrary to the Contract or law.

CONSULTANT will not perform work in excess of the Contract Amount without prior authorization by an amendment executed by COUNTY. Work performed in excess of the Contract Amount without prior authorization by amendment is at CONSULTANT'S own risk. Additional Services identified in EXHIBIT "B" – COMPENSATION SCHEDULE, are services within the scope of this Contract but not included within the Tasks identified as of the effective date of this Contract. If ordered, CONSULTANT will invoice additional Services at the rates incorporated into this Contract as in EXHIBIT "B" – COMPENSATION SCHEDULE. COUNTY may add additional services throughout the term of the Contract by providing notice in writing to CONSULTANT. Hourly billable rates shown in EXHIBIT "B" – COMPENSATION SCHEDULE will only be adjusted by written amendment to the Contract. The Parties may add additional required professional classifications or disciplines to EXHIBIT "A" - SCOPE OF SERVICES by written amendment at any time.

COUNTY has ten (10) calendar days from the date of invoice to notify CONSULTANT of any invoicing discrepancies. COUNTY and CONSULTANT will meet to resolve any discrepancies before the invoice is approved or rejected for payment. Subconsultant charges must be supported by appropriate documentation upon request by COUNTY.

In accordance with A.R.S. § 28-411, COUNTY will issue payments to Prime Consultants within 21 calendar days after receipt of a correct invoice. In addition, CONSULTANT will pay subconsultants within seven (7) calendar days after receiving payment from COUNTY, unless exceptions exist within the agreed-upon consultant/subconsultant agreement. CONSULTANT shall not withhold subconsultants' payment if COUNTY has paid for the full value of

services rendered. Failure by the CONSULTANT to invoice COUNTY in accordance with the terms of the Contract and/or pay subconsultants in accordance with A.R.S. § 28-411 shall be constituted as a material breach of contract. COUNTY reserves the right to request that CONSULTANT provides proof of payment to subconsultants if a complaint of non-payment is made to COUNTY by the subconsultant.

Incomplete or incorrect invoices will be returned to the submitter within seven (7) calendar days of receipt by COUNTY. The 21-day calendar payment timeframe for COUNTY payment will begin anew upon receipt of the corrected invoice.

CONSULTANT will not perform work in excess of the Contract Amount without prior authorization by an amendment executed by COUNTY. Work performed in excess of the Contract Amount without prior authorization by amendment shall be at CONSULTANT'S own risk.

Furthermore, the CONSULTANT and COUNTY recognize that in actual economic practice, overcharges resulting from anti-trust violations are borne by the ultimate user which in this case is the COUNTY. Therefore, the CONSULTANT, acting as a vendor, hereby assigns to the COUNTY any and all claims for such overcharges.

The Consultant warrants that it has not employed or retained any company or person, other than bona fide employee working solely for the Consultant to solicit or secure this Contract and that it has not paid or agreed to pay any company or person other than bona fide employee working sole for the consultant any fee commission percentage brokerage fee gift or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, County shall have the right to annul this Contract without liability or in its discretion deduct from the Contract price or consideration or otherwise recover the full amount of such fee commission percentage brokerage fee gift or contingent fee.

ARTICLE 5 – PROJECT BASELINE AND ADJUSTMENTS

- A. COUNTY and CONSULTANT have agreed upon the Project scope and the total Cost Plus Fixed Fee, and will prepare a CPM-based schedule for the performance of the work. The schedule is based on assumptions and expectations agreed upon by the Parties. Schedule estimates for the timeframes associated with outside party activities, i.e. design and other reviews, and/or permits or other clearances do not represent commitments made by either outside agencies or the permit-granting entities of County. This Project Baseline represents a firm commitment by the Parties to complete the work within the schedule and total cost identified in the Baseline, subject to schedule variations by outside parties and other factors beyond the control of the Parties.
- B. Although the Baseline reflects the best estimates and expectations of the Parties at the time of agreement, there is an element of uncertainty associated with the design process that makes the actual schedule and effort required to complete the work difficult or impossible to establish in advance. Unusual citizen input, litigation, regulatory changes, significant delays by utilities or others, unforeseen decisions or commitments by policy makers, or other unanticipated events or factors beyond the control of the Parties that differ materially from the expectations of the Parties may delay or disrupt the schedule and/or require a change in the level of resources or effort. The Project Baseline may be adjusted as follows:
1. A delay in the work attributable to a failure by COUNTY to adhere to its estimates with respect to schedule is an excusable delay for which an adjustment may be made to the schedule. In any such case affecting a task on the critical path, the schedule of the affected task or activity may be extended one (1) day for each day of COUNTY-caused delay; provided, however, that if the COUNTY-caused delay overlaps a period of delay attributable to any other cause, the extension for COUNTY-caused delay is limited to the number of non-overlapped days of COUNTY-caused delay.
 2. There is no adjustment for any delay in the work attributable to a failure by CONSULTANT to adhere to its commitments with respect to schedule. In the event of a significant delay attributable to a failure by CONSULTANT to adhere to its schedule expectations, CONSULTANT will provide a recovery plan to COUNTY within five (5) days of COUNTY's request. For the purposes of this paragraph, a delay arising

from or attributable to a necessity for CONSULTANT to make more than two (2) submissions of plans or documents for approval is a failure by CONSULTANT to adhere to its schedule commitments. CONSULTANT's work associated with additional reviews are non-compensable.

3. A delay in the work attributable to any other cause that differs materially from the expectations of the Parties regarding that cause is an excusable delay for which the Parties will negotiate an appropriate schedule adjustment. If the period of delay attributable to any cause under this paragraph overlaps a period of delay attributable to any other cause, the adjustment under this paragraph will be made first and the delay attributed to such other cause will be limited to that occurring outside of the overlap.
 4. If any of the causes of delay in Paragraphs 1 or 3 above affects a task or activity on the critical path, then the schedule adjustment may include adjustment to the completion date. If the cause does not affect a task or activity on the critical path, then the adjustment will be made from Float and the completion date will not change.
 5. If any of the causes of delay in Paragraphs 1 or 3 above results in material provable additional costs to the affected task or tasks as a result of disruption of the schedule, then the Parties will negotiate an equitable adjustment to the cost for the affected task or tasks, but not to the fee.
 6. The Parties will negotiate an equitable adjustment of cost and fee for any task or tasks for which there is any significant change in the level of effort arising from additional or changed work requested or directed in writing by COUNTY that materially deviates from or adds to the baseline expectations or assumptions of the Parties with respect to the work.
 7. If any action, comment, cause, decision, or other event attributable to any third party results in a change in requirements that differs materially from expectations, then the Parties will negotiate in good faith an equitable adjustment in the cost and fee for the affected task or tasks.
- C. CONSULTANT agrees to complete the work by the completion date in the schedule, as it may be adjusted under the preceding provisions of this Article. Costs incurred by CONSULTANT to complete the work after the completion date in the schedule are not reimbursable under this Contract.

ARTICLE 6 – REALLOCATION OF FUNDS

Given the magnitude and complexity of the scope required by this Contract, the Parties understand that the actual cost to perform specific tasks may vary from the estimates reflected in EXHIBIT "A" - SCOPE OF SERVICES and EXHIBIT "B" – COMPENSATION SCHEDULE.

If the actual cost to complete a task is less than the estimated amount for that task, the cost savings realized accrues to COUNTY. With the agreement of the Parties, COUNTY may reallocate the cost savings to other tasks in EXHIBIT "A" - SCOPE OF SERVICES and EXHIBIT "B" – COMPENSATION SCHEDULE as follows:

- A. Reallocation between subtasks in EXHIBIT "A" - SCOPE OF SERVICES under any one of the major task categories in EXHIBIT "B" – COMPENSATION SCHEDULE may be made between the COUNTY's department representative and CONSULTANT's project manager by written agreement.
- B. County's Procurement Director may make a reallocation among the major tasks in EXHIBIT "B" – COMPENSATION SCHEDULE by a Contract amendment, provided that the transfer does not increase the total amount of the Contract.
- C. The Board of Supervisors may make any reallocation or adjustment in EXHIBIT "A" - SCOPE OF SERVICES or EXHIBIT "B" – COMPENSATION SCHEDULE that increases the total contract amount through a Contract Amendment.

Costs and Fee may not be reallocated from any task on which work has not progressed significantly and which does not include actual or demonstrable savings or reductions in required effort such that the task may be completed for less than the balance of the task remaining after the transfer.

ARTICLE 7 – INSURANCE

In order for COUNTY to enter into a Contract with a Consultant for services, CONSULTANT shall meet the insurance requirements prior to the execution of the Contract as evidenced by a Certificate of Insurance with the required endorsements.

1. CONSULTANT shall have the capability and experience to perform and be responsible for negligent acts which may occur in the course and scope of the CONSULTANT's performance under the Contract.
2. CONSULTANT is responsible for certifying that any Subconsultant, included as part of their Contract, meet the insurance requirements outlined in the Contract. Any variations to current insurance requirements shall be submitted to COUNTY and the State of Arizona, for review and approval.
3. An "indemnification" clause will be included in the Contract which will be signed by CONSULTANT, to protect COUNTY, State of Arizona, ADOT, FHWA and their employees (see Article 8).

CONSULTANT's insurance will be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have an—A.M. Best rating of not less than A-VII. COUNTY in no way warrants that the above-required minimum insurer rating is sufficient to protect CONSULTANT from potential insurer insolvency.

CONSULTANT and all Subconsultants shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives, employees or Subconsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect CONSULTANT from liabilities that might arise out of the performance of the work under this Contract by CONSULTANT, its agents, representatives, employees or Subconsultants, and the CONSULTANT is free to purchase additional insurance.

CONSULTANT may purchase an excess or umbrella policy to secure these limits. If CONSULTANT or Subconsultant uses any excess or umbrella insurance to meet the required limits then this excess or umbrella insurance must be "follow form" equal to or broader in coverage than the underlying insurance requirements, including but not limited to, additional insured endorsements and waiver of subrogation endorsements.

A. Minimum Scope and Limits of Insurance:

CONSULTANT will procure and maintain, until all of their obligations have been discharged, coverage with limits of liability not less than those stated below.

1. Commercial General Liability (CGL) – Occurrence Form with limits of \$1,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage.
2. Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000.
3. Workers' Compensation and Employers' Liability - Statutory requirements and benefits. Coverage is compulsory for employers of one or more employees. Employer's Liability - \$1,000,000. Note: The Workers' Compensation requirement will not apply to a Consultant that is exempt under A.R.S. § 23-

901, and when such Consultant executes the appropriate County Sole Proprietor or Independent Consultant waiver form.

4. Professional Liability (Errors and Omissions) Insurance – Professional Liability to include professional misconduct and negligent acts of anyone performing professional services under this Contract with policy limits not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. A Claims-Made policy is acceptable.

In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy will precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

B. Additional Insurance Requirements:

The policies will include, or be endorsed to include, as required by this written agreement, the following provisions:

1. Additional Insured Endorsement: The General Liability and Business Automobile Liability Policies will each be endorsed to include Pima County, State of Arizona, Arizona Department of Transportation, FHWA, their departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of CONSULTANT.
2. Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies will each contain a waiver of subrogation endorsement in favor of COUNTY, and its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of CONSULTANT.
 - a. Primary Insurance Endorsement: CONSULTANT's policies will stipulate that the insurance afforded CONSULTANT will be primary and that any insurance carried by the Department, its agents, officials, employees or COUNTY, ADOT, or FHWA will be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
 - b. Insurance provided by CONSULTANT will not limit CONSULTANT's liability assumed under the indemnification provisions of this Contract.

C. Notice of Cancellation:

CONSULTANT's insurance policies and endorsements shall not be permitted to expire, be cancelled, suspended or materially changed from the agreed upon Insurance Requirements for any reason without thirty (30) days advance written notice to COUNTY of the policy cancellation, suspension or material change. CONSULTANT must provide written notice to COUNTY within 2 business days of receipt of notice. For cancellation of non-payment, Insurer is to provide COUNTY with written notice 10 days prior to cancellation of policy. Such notice will be mailed, emailed, hand-delivered or sent by facsimile transmission to Pima County Procurement, Design and Construction Division, 130 W. Congress, 3rd Floor, Tucson, AZ 85701.

D. Verification of Coverage:

CONSULTANT will furnish COUNTY with certificates of insurance (valid ACORD form or equivalent approved by COUNTY) as required by this Contract. An insurance certificate submitted to COUNTY representing insurance coverage must include an original signature from an authorized representative.

1. All certificates and endorsements, as required by this written agreement, are to be received and approved by COUNTY before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
2. All certificates required by this Contract will be sent directly to COUNTY. County project or Contract number and project description will be noted on the certificate of insurance. COUNTY reserves the right to require complete copies of all insurance policies required by this Contract at any time.

E. Approval and Modifications:

Pima County Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this Contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

ARTICLE 8 – INDEMNIFICATION

To the fullest extent permitted by law, CONSULTANT will indemnify and hold harmless COUNTY, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, including reasonable attorney's fees and court costs, to the extent caused by any negligent, reckless or intentionally wrongful act or omission of CONSULTANT, its agents, employees or anyone acting under its direction or control or on its behalf in connection with performance of this Contract. The obligations under this Article shall not extend to the negligence of COUNTY, its agents, employees or indemnitees.

All warranty and indemnification obligations under this Contract shall survive expiration or termination of the Contract, unless expressly provided otherwise. The Parties agree that any indemnification provision inconsistent with state statute will be interpreted and applied as if it were consistent with state statute.

Upon request, CONSULTANT may fully indemnify and hold harmless any private property owner granting a right of entry to CONSULTANT for the purpose of completing the project. The obligations under this Article do not extend to the negligence of COUNTY, its agents, employees or indemnitee.

ARTICLE 9 – COMPLIANCE WITH LAWS

CONSULTANT will comply with all applicable federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Contract. The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract, and any disputes hereunder. Any action relating to this Contract must be brought and maintained in Superior Court in Pima County. Any changes in the governing laws, rules, and regulations during the term of this Contract apply, but do not require an amendment.

ARTICLE 10 – STATUS OF CONSULTANT

The status of CONSULTANT is that of an independent contractor and CONSULTANT is not considered an employee of Pima County and is not entitled to receive any of the fringe benefits associated with regular employment, and will not be subject to the provisions of the merit system. CONSULTANT is responsible for payment of all Federal, State and Local taxes associated with the compensation received by CONSULTANT from COUNTY. CONSULTANT is responsible for program development and operation without supervision by COUNTY.

ARTICLE 11 – CONSULTANT'S PERFORMANCE

CONSULTANT will perform the work in accordance with the terms of the Contract and with the degree of care and skill required of any similarly situated Arizona registrant. CONSULTANT will employ suitably trained and skilled professional personnel to perform all required services under this Contract. Prior to changing any key personnel, especially those key personnel COUNTY relied upon in negotiating this Contract, CONSULTANT will obtain the approval of COUNTY.

No substitution or transfer of personnel, specifically identified in the approved Key Personnel list shall be made without prior written approval by COUNTY. Key Personnel are those individuals whose qualifications were highly significant and appropriate in evaluating the overall qualifications of the project team. Key Personnel includes, at a minimum:

- 1) The Consultant's registered Project Principal/Owner responsible for the overall technical and administration aspects of this Contract;
 - 2) The person in direct charge of the overall project work (Project Manager);
 - 3) The person in charge of each major engineering disciplines/component of the work (e.g., bridge, pavement design, environmental, etc.);
 - 4) Where applicable, the person in charge of overall scheduling of the project work.
- Key Personnel may also include, but are not limited to, Project Engineer, Subconsultants' Team members and any other Key Personnel deemed vital to the completion of the project, and whose qualifications were evaluated by the Selection Panel.

The County will review the Consultant's proposed list of Key Personnel presented during contract negotiations and will approve the list of Key Personnel assigned to the Contract. The County's decision as to Key Personnel composition shall be final.

The Consultant shall not change any of the Key Personnel assigned to this Contract until it has obtained written approval from COUNTY. The Consultant shall notify COUNTY in advance of an anticipated change in the Key Personnel no later than 10 calendar days prior to the change, and shall inform the Department of the reasons the change for the change and shall certify that the overall intent of the Contract will not be impaired by the change. The advance notice requesting a Key Personnel change shall include the name(s) of the Key Personnel, date of departure, the proposed replacement and his/her credentials/resume. Qualifications of any Key Personnel proposed in a change shall be equal to or greater than the original qualifications of the person being replaced.

The County shall have the right to approve or reject the proposed successor. The County will consider any change in Key Personnel, and at its discretion may decide to terminate the Contract for convenience if, in COUNTY's sole discretion, COUNTY believes that the project team is materially different because of the change. The County shall make its decision within 30 days of the Consultant's request to change Key Personnel.

Failure to provide COUNTY with advanced notification may result in termination of the Contract, award of damages to COUNTY or loss of requalification status.

When technical review establishes that all phases of the Contract have been completed to the satisfaction of COUNTY, COUNTY will notify the Consultant to follow the final closeout procedure specified in UTC Article 4.20.

ARTICLE 12 – NON-WAIVER

The failure of COUNTY to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

ARTICLE 13 – SUBCONSULTANT

CONSULTANT will be fully responsible for all acts and omissions of its SUBCONSULTANT and of persons directly or indirectly employed by SUBCONSULTANT and of persons for whose acts any of them may be liable to the same extent that CONSULTANT is responsible for the acts and omissions of persons directly employed by it. Nothing in this Contract creates any obligation on the part of COUNTY to pay or see to the payment of any money due any SUBCONSULTANT, except as may be required by law.

ARTICLE 14 – NON-ASSIGNMENT

- A. CONSULTANT will not assign its rights to this Contract in whole or in part, without prior written approval of COUNTY. COUNTY may withhold approval at its sole discretion, provided that COUNTY will not unreasonably withhold such approval.
- B. In cases where a firm changes its name, acquires, or merges with another company, the firm under Contract with COUNTY shall notify COUNTY of name or ownership changes within **10 business days** from the date when the name or ownership change is legally signed/approved **before** the new Consultant begins any work on acquired firm's contract(s). The Consultant changing its name due to merger, acquisition, consolidation and/or transfer of ownership shall be responsible for fulfilling all obligations, liabilities, and Contract terms/conditions for all COUNTY Contracts of the acquired firm. The new/acquiring firm shall provide COUNTY with the required information to approve the name change, including but not limited to the following:
 - 1. A letter, on company letterhead, indicating the new name and reason for the change. The letter shall also include:
 - a. Effective date of the change.
 - b. List of active and pending closeout COUNTY Contracts affected by the change with contract description. Indicate which contract(s) the firm served as a Consultant or Subconsultant.
 - c. A statement certifying that the new/acquiring Consultant shall assume all obligations and liabilities set forth in the respective contracts for all listed contracts between the new/acquiring Consultant and COUNTY.
 - d. A statement certifying that no changes have been made in the Key Personnel responsible for the affected contracts. If a Key Personnel change occurs resulting from the merger, acquisition, consolidation and/or transfers of ownership, the Consultant shall submit a separate request to obtain COUNTY'S approval for the Key Personnel change in accordance with Section 4.34 (KEY PERSONNEL) of this Contract.
 - 2. A copy of Arizona Corporation Commission (ACC) or home-state equivalent Corporation Commission approval documentation of the new/acquiring Consultant.
 - 3. Updated professional license(s) of the new/acquiring Consultant.
 - 4. Updated W-9 Form of the new/acquiring Consultant.
- C. If the acquiring firm is approved by COUNTY to take over the merged or acquired Contracts, the Contracts shall be modified to include the acquiring firm's name by a Contract Modification. The Consultant shall also re-qualify with COUNTY under the new entity/firm name by certification of financial systems.
- D. If a Subconsultant listed in the Contract changes its name due to merger, acquisition, consolidation and/or transfer of ownership, the **Subconsultant shall notify the Consultant** of the name or ownership changes within **10 business days** when the name or ownership change is legally signed/approved **before** the

new/acquiring Subconsultant begins any work on the acquired Subconsultant contract(s). The Consultant shall request COUNTY'S written approval within 10 calendar days from the Subconsultant notification. The name-change request shall include, at a minimum, items required in B. 1 and 2 of this Article.

ARTICLE 15 – NON-DISCRIMINATION

CONSULTANT agrees to comply with all provisions and requirements of the authorities listed in Appendix "B" of Exhibit "C", which is hereby incorporated into this Contract as if set forth in full herein **including flow down of all provisions and requirements to any subconsultants**. During the performance of this Contract, CONSULTANT will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

ARTICLE 16 – AMERICANS WITH DISABILITIES ACT

CONSULTANT will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. If CONSULTANT is carrying out government programs or services on behalf of COUNTY, then CONSULTANT will maintain accessibility to the program to the same extent and degree that would be required of the COUNTY under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so may result in the termination of this Agreement.

ARTICLE 17 – CANCELLATION FOR CONFLICT OF INTEREST

The Standard of Conduct and Conflict of Interest laws and guidelines contained in the Arizona Revised Statutes (A.R.S.) § 38-501 through 38-511 and applicable Pima County Conflict of Interest Policies and Procedures apply to this Contract.

See Exhibit "C", UTC Article 4.21.

ARTICLE 18 – TERMINATION OF CONTRACT FOR DEFAULT

See Exhibit "C", UTC Article 4.18.

ARTICLE 19 – TERMINATION FOR CONVENIENCE OF COUNTY

COUNTY may terminate this Contract at any time by giving written notice to CONSULTANT of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials will, at the option of the COUNTY, become its property. If COUNTY terminates the Contract as provided herein, COUNTY will pay CONSULTANT an amount based on the time and expenses incurred by CONSULTANT prior to the termination date, however, no payment will be allowed for anticipated profit on unperformed services.

ARTICLE 20 – NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision in this Contract, this Contract may be terminated if for any reason the Pima County Board of Supervisors or Procurement Director does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, COUNTY will have no further obligation to CONSULTANT, other than payment for services rendered prior to termination.

ARTICLE 21 – NOTICES

Any notice required or permitted to be given under this Contract must be in writing and be served by delivery or by certified mail upon the other party as follows:

COUNTY:

Name
Dept
Address
City, State, Zip
Tel:
Fax:

CONSULTANT:

Name
Firm Name
Address
City, State, Zip
Tel:
Fax:

ARTICLE 22 – OTHER DOCUMENTS

The Parties in entering into this Contract have relied upon information provided in Solicitation for Qualifications #233336, and on representations and information in CONSULTANT'S response to said SFQ. These documents are hereby incorporated into and made a part of this Contract as if set forth in full herein, to the extent not inconsistent with the provisions of this Contract. CONSULTANT will perform services in accordance with the terms of the Contract and at a level of care consistent with prevailing industry standards. In the event any provision of this Contract is inconsistent with those of any other document, the Contract provisions will prevail.

ARTICLE 23 – REMEDIES

Either party may pursue any remedies provided by law for the breach of this Contract, provided, however, that the procedures in **ARTICLE 27** are first exhausted. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

ARTICLE 24 – SEVERABILITY

Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law is ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

ARTICLE 25 – BOOKS AND RECORDS

CONSULTANT will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of COUNTY.

CONSULTANT will retain all records relating to this Contract at least five (5) years after its termination or cancellation or until any related pending proceeding or litigation has been closed, if later. Alternatively, CONSULTANT may, at its option, deliver such records to COUNTY for retention.

ARTICLE 26 – DELAYS

Neither party hereto will be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party.

ARTICLE 27 – DISPUTES

In the event of a dispute between the Parties regarding any part of this Contract or the Parties' obligations or performance hereunder, either Party may request a special meeting between their respective representatives to resolve the dispute. If the dispute remains unresolved, then either Party may request escalation of the issue to a meeting between the Director of the County Department administering this Contract and CONSULTANT'S counterpart official, such meeting to be held within one (1) week of the request, unless otherwise agreed. If the dispute is still not resolved after that meeting, then either Party may pursue such remedy or remedies as may be available to them under the laws of the State of Arizona.

The Parties will continue performance of their respective obligations under this Contract notwithstanding the existence of any dispute.

The Consultant agrees that if due to death or any other occurrence it becomes impossible for any principal or employee of the Consultant to render the services required under this Contract, neither the Consultant nor the surviving principals shall be relieved of any obligation to render complete performance. However, in such event, the Department may terminate this Contract if it considers the death or incapacity of such principal or employee to be a loss of such magnitude as to (1) affect the Consultant's ability to satisfactorily complete the performance of this Contract, or (2) materially affect the evaluation of the Consultant's qualifications.

ARTICLE 28 – OWNERSHIP OF DOCUMENTS

See Exhibit "C", UTC Article 4.14.

ARTICLE 29 – PUBLIC INFORMATION

All information submitted by CONSULTANT in any way related to this Contract, including, but not limited to, pricing, product specifications, work plans, and any supporting data becomes public information and upon request, is subject to release and/or review by the general public including competitors.

Any information submitted related to this Contract that CONSULTANT believes constitutes proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as CONFIDENTIAL prior to submittal to COUNTY and be accompanied by an index specifically identifying and describing the general contents of each page so marked. The index is a Public Record and must not include any information considered confidential.

Notwithstanding the above provisions, in the event records marked CONFIDENTIAL are requested for public release pursuant to A.R.S. § 39-121 et seq., County will release records marked CONFIDENTIAL ten (10) business days after the date of notice to CONSULTANT of the request for release, unless CONSULTANT has, within the ten (10) day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release is not counted in the time calculation. COUNTY will notify CONSULTANT of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

County is not, under any circumstances, responsible for securing a protective order or other relief enjoining the release of records marked CONFIDENTIAL, nor is County in any way financially responsible for any costs associated with securing such an order.

ARTICLE 30 – LEGAL ARIZONA WORKERS ACT COMPLIANCE

See Exhibit "C", UTC Article 4.16.

ARTICLE 31 – ISRAEL BOYCOTT CERTIFICATION

Consultant hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Consultant may result in action by COUNTY up to and including termination of this Contract.

ARTICLE 32 - ENTIRE AGREEMENT

This document constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Contract may be modified, amended, altered or extended only by a written Amendment signed by the parties.

IN WITNESS WHEREOF, the parties have affixed their signatures to this Contract on the dates written below.

PIMA COUNTY:

CONSULTANT:

Procurement Director

Signature

Date

Name and Title (Please Print)

Date

APPROVED AS TO FORM:

Deputy County Attorney

Name (Please Print)

Date

End of Attachment "3"

EXHIBIT “A” (4 pages) SCOPE OF SERVICES

Cactus Forest Drive at Old Spanish Trail Left Turn Lane (4CFLTL)

Consultant Scope of Services for Preliminary and Final Design

During the term of this Contract, the CONSULTANT shall perform professional services for Pima County (COUNTY) in connection with the above referenced project. This scoping document shall be used to plan, conduct, and complete the CONSULTANT’s work on the project.

Project Description

This scope serves as a guideline for the development of the Cactus Forest Drive at Old Spanish Trail Left Turn Lane project which has partial federal funding through the Highway Safety Improvement Program (HSIP).

This project consists of the design for construction of a southbound left-turn lane on Old Spanish Trail at Cactus Forest Drive. Items included in this scope are: repaving and symmetric widening of Old Spanish Trail from approximately 200’ south of the intersection to approximately 400’ north of the intersection by approximately 5’ on each side where needed, minor embankment widening on the west side of Old Spanish Trail, installation of signing and striping on Old Spanish Trail as needed for roadway changes, repaving of two private driveways within the project limits, repaving of the connection of Pantano Trail to Old Spanish Trail, and replacement of culverts crossing private driveways. The new cross section of Old Spanish Trail will be 5’ wide shoulders, 11’ wide through lanes, and a 12’ wide left turn lane.

Project activities include Scoping, Project Assessment, Conceptual Phase, Documentation Phase, Verification Phase, and PS&E Phase. All documents required by the Arizona Department of Transportation (ADOT) guidelines for HSIP projects should be prepared in accordance with the PCDOT Roadway Design Manual (RDM) and other relevant County guidelines and procedures. The project should be prepared for delivery using the traditional Design, Bid, Build (DBB) Method.

WORK TASKS

1. Project Management

The CONSULTANT shall provide a dedicated Project Manager (PM) plus the design staff necessary to develop this project. The CONSULTANT PM shall be responsible for coordinating project activities with the COUNTY PM in the day-to-day management and oversight of this project. The CONSULTANT PM is responsible for working with PCDOT to keep the project focused on staying within the approved scope, on budget, and on schedule. The CONSULTANT shall work jointly with PCDOT to develop a project schedule that completes the required activities in the shortest time frame possible while meeting all procedures and requirements. The CONSULTANT shall work with the COUNTY PM and evaluate the process steps to determine how to best incorporate the process and delivery principles into this project in order to ensure total acceptance by both internal and external partners and stakeholders. The CONSULTANT PM shall also be expected to provide regular and on-going status updates to the COUNTY PM as the various efforts progress. The COUNTY PM may distribute status updates to other stakeholders to facilitate coordination, communication, and interaction with COUNTY staff, ADOT staff, and the public. The CONSULTANT shall organize, plan for, participate in, and provide follow up for all meetings. The CONSULTANT shall provide written responses to review comments and shall perform quality control on all deliverables.

2. Conceptual Phase

This phase consists of work activities related to completing project initiation, surveys and investigations, conceptual design, and community outreach.

Project Initiation

Project initiation shall consist of a project kickoff/alignment meeting, coordinated with ADOT, and designed to bring all key partners and stakeholders together to explain the overall project, establish key lines of communication, establish an issue resolution and escalation procedure, confirm ADOT documentation requirements, and identify key issues and concerns as early as possible. This effort closely resembles the Design Partnering activities that PCDOT uses on larger, more complex projects. The COUNTY shall plan, attend, and perform follow-up for the project kickoff meeting. The CONSULTANT shall attend and participate in the project kickoff meeting.

Survey and Investigation

The CONSULTANT shall be responsible for investigations that support all design and permitting activities.

The CONSULTANT shall work with Pima County Survey to obtain survey data. The COUNTY shall be responsible for performing the survey activities in accordance with the 2013 Roadway Design Manual (RDM) using NAD 83 as the horizontal datum, and NAVD 88 for the vertical datum. The level of detail shall be enough to confirm existing locations and conditions and support the subsequent detailed design activities. It is assumed that this activity shall consist of establishing local control, and establishing basic vertical and horizontal alignment/control lines for location and reference.

The CONSULTANT shall work with Pima County Real Property staff to obtain right-of-way and easement acquisitions, if needed.

Conceptual Design

The CONSULTANT shall develop the overall conceptual design taking into account the input and guidance provided by all technical team members, including but not limited to: design engineering, field engineering, traffic engineering, environmental compliance, cultural compliance, utility coordination, flood control, bicycle & pedestrian, operations and maintenance, development services, etc. The CONSULTANT shall develop the design to a level of detail adequate to ensure that during any subsequent phases, no major design items shall need revising and the cost estimate does not exceed the limits of the original budget. This means that design shall be developed to approximately 30-50% overall with many of the key features and elements being designed to a much higher level of detail so that that these items can be identified, designed, and developed along with the appropriate quantity calculations and cost estimates. This development process shall include bi-weekly meetings that serve as over-the-shoulder reviews. Some meetings may occur in the field on site as needs dictate. Upon completion of the conceptual design, a review workshop will be held with COUNTY staff to perform a detailed review of all documents. For estimation purposes, assume six over-the-shoulder meetings at two hours each, two field meetings at two hours each, and one workshop at eight hours each. Design alternatives shall be developed and analyzed and project activities documented and communicated. During this phase the CONSULTANT shall identify ALL information related to environmental and cultural permits and approvals, and utility and right of way clearances.

Community Outreach

The COUNTY shall plan, lead and develop community outreach efforts utilizing Pima County Community Relations staff. The CONSULTANT shall provide displays for the first public meeting, attend the first public meeting, respond to technical questions from the public and generally support the COUNTY's public outreach activities.

3. Documentation Phase

As the Conceptual Phase transitions to the Documentation Phase, the CONSULTANT shall proceed with work activities related to completing and obtaining approvals for the initial and final Project Assessment, Technical environmental and cultural documents (Biological, etc.), and the Categorical Exclusion. Pima County shall be the lead contact with ADOT, FHWA, and other review agencies and will provide all project documents to these agencies.

Initial and Final Project Assessment

The CONSULTANT shall prepare the Initial and Final Project Assessments that comply with ADOT format and requirements. The CONSULTANT shall provide to Pima County draft copies of the Initial and Final Project Assessments for review. After revision by the CONSULTANT and verification by the COUNTY, the CONSULTANT shall provide final copies to the County for submittal and resubmittals to ADOT and other review agencies as needed.

Technical Documents

The CONSULTANT shall prepare all agency scoping letters and environmental technical documents including but not limited to Biological reports. The CONSULTANT will perform lead-based paint and asbestos sampling if needed. The CONSULTANT shall provide a Class III Cultural Resources Survey report to federal standards that shall be performed and prepared by an Arizona State Museum permitted archaeologist. The COUNTY will prepare the Preliminary Environmental Site Assessment (PISA) - Hazardous Materials report, and Phase 1 ESA's for acquisitions, if needed. The CONSULTANT shall complete activities such as a records reviews, field surveys, exploratory excavations, and documentation, and reporting. The CONSULTANT shall provide draft copies of all technical reports to COUNTY for review. After revision by the CONSULTANT and verification by the COUNTY, the CONSULTANT shall provide final copies to the COUNTY for submittal to ADOT and other review agencies as needed.

Categorical Exclusion

The CONSULTANT shall prepare the Categorical Exclusion for the COUNTY's submittal to ADOT and FHWA. The CONSULTANT shall provide draft copies to COUNTY for review. After revision by the CONSULTANT and verification by COUNTY, the CONSULTANT shall provide final copies to the COUNTY for submittal to ADOT and other review agencies as needed. CONSULTANT shall provide all necessary information and documentation and perform all activities necessary to obtain final approval from ADOT and ultimately FHWA.

4. Verification Phase

As the Documentation Phase transitions to the Verification Phase, the CONSULTANT shall proceed with work activities related to obtaining ADOT Authorization to Proceed with Design, developing the detailed Design, and conducting Community Outreach.

ADOT Authorization to Proceed with Design

The CONSULTANT shall work closely with the COUNTY to request and obtain authorization to proceed with design. The CONSULTANT shall provide all information and documentation in a format that the COUNTY can use to respond to any ADOT or other review agency's comments.

Design

The CONSULTANT shall develop the detailed design, taking into account the input and guidance provided by all technical team members, including but not limited to: design engineering, field engineering, traffic engineering, environmental compliance, cultural compliance, flood control, bicycle & pedestrian, operations and maintenance, development services, etc. The CONSULTANT shall develop the design to a minimum of 60% level of detail, but many features and elements shall be designed to a much higher level. This development process shall include bi-weekly meetings that serve as over-the-shoulder reviews. Some meetings may occur in the field on site as needs dictate. Upon completion of the conceptual design, a review workshop will be held with COUNTY staff to perform a detailed review of all documents. For estimation purposes, assume six over-the-shoulder meetings at two hours each, two field meetings at two hours each, and one workshop at eight hours each. Design details shall be developed and analyzed and project activities documented and communicated. The CONSULTANT shall continue to verify that ALL clearance requirements continue to be met by the design.

The CONSULTANT shall coordinate with utilities so that all utility conflicts are identified and relocated prior to construction. The CONSULTANT shall communicate and meet with utilities as needed to facilitate coordination. "Final Plans for Utilities" which are typically less than 100% final design plans, shall be provided by the CONSULTANT to the COUNTY for distribution to the utilities.

Community Outreach

The COUNTY shall plan, lead and develop community outreach efforts utilizing Pima County Community Relations staff. The CONSULTANT shall provide displays for a second public meeting, attend a second public meeting, respond to technical questions from the public and generally support Pima County’s public outreach activities.

5. PS&E Phase

As the Verification Phase transitions to the PS&E Phase, the CONSULTANT shall proceed with work activities related to completing Bid Documents (Plans, Specifications and Estimate), which include Storm Water Pollution Prevention Plan binder and plans using the latest County SWPPP template. Although irrigation will not be designed, landscape activities should be included in the bid documents, such as vegetation removals and relocations, tree and shrub pruning, eradication of invasive species, soil stabilization measures, etc. The CONSULTANT shall assist in acquiring final approvals and agreements and requesting Authorization to Proceed to Advertising.

Bid Documents

The CONSULTANT shall complete detailed design and develop final contract plans, specifications, and estimate (PS&E) to the 100% level so that the project can be advertised for construction. Some special provisions will be stored specs available from Pima County; other special provisions will be unique to the project and written by the CONSULTANT. Development of final PS&E shall include regular project meetings, over-the-shoulder review meetings, and a plan review workshop. Targeted workshops on the Special Provisions and bid items shall also be required. The CONSULTANT shall be responsible for organizing, preparing for, and performing follow up revisions for all review meetings and workshops. The CONSULTANT shall continue to verify that ALL clearance requirements continue to be met by the final design.

Authorization to Proceed to Advertising

The CONSULTANT shall be responsible for working closely with the COUNTY to develop any and all required documents and letters, and obtain any and all clearances and approvals, including any required permits and/or agreements. The COUNTY shall be responsible for submitting the Authorization to Proceed, and upon approval from ADOT and FHWA, proceed with advertising the project for construction.

End of Exhibit “A” Scope of Services

EXHIBIT “B” (4 pages) COMPENSATION SCHEDULE

*****FOR INFORMATION PURPOSES ONLY, DO NOT SUBMIT WITH YOUR RESPONSE*****

1. ***COST PLUS FIXED FEE SCHEDULE OF PAYMENTS***

(Detailed by Major Milestone, Not to Exceed Cost by Task (Direct Labor, Indirect, and Other Direct Costs), and Fixed Fee)

(DO NOT SUBMIT THIS SCHEDULE WITH THE SOQ)

2. ***COMPENSATION DETAILS***

A. Cost Allocation and Ceilings

The compensation schedule will contain the negotiated cost allocations for each individual task. The compensation schedule will be used to monitor cost expenditures and sets the fixed price that can be charged for work pursuant to the specified task.

B. Cost Adjustments

If, for valid reason(s), CONSULTANT notifies the Project Manager that the requisite work cannot be performed within the task’s compensation allocation, and the Project Manager (PM) concurs, PCRWRD will consider modifying cost allocations. The total compensation may be increased only by formal amendment to this agreement.

C. Progress Payments

It is anticipated certain elements of the Project may take longer than one (1) month to complete. These elements may be at considerable cost to CONSULTANT prior to their full completion and acceptance by COUNTY. In such cases, at the sole discretion of COUNTY, COUNTY may authorize interim progress payments to CONSULTANT. The invoice from CONSULTANT will be proportionate to the actual percentage of work completed through the period covered by the invoice, as accepted by the PM.

D. The Fixed Fee for each assignment will be negotiated on a case-by-case basis. The fee will be a percent of CONSULTANT or co-consultants level of effort cost estimate agreed to by COUNTY excluding sub-consultants and other direct cost estimates. The fee will be fixed for the scope of work detailed in the Contract. The fixed fee percentage will be based upon historical departmental percentages for similar assignments, published industry guidelines and magnitude and duration of the assignment. Fixed Fee for engineering sub-consultants will generally follow the same guidelines established for the Prime Consultants but can also be negotiated on a case-by-case basis as appropriate.

E. Cost Items

1. Hourly Billing

a. Hourly Billing Rates

- Actual Payroll Rates within published industry standards
- Actual payroll rates for each person anticipated to be performing services on the assignment will be provided in advance of execution of the Contract. Said listing will be updated on an annual basis during the term of the Contract
- Hourly fee schedules for various position titles are not allowed

- b. Annual Salaried Professionals
 - Annual Salary individuals working a normal forty (40) hour week will be divided by two thousand eighty (2,080) hours to arrive at hourly billing rates
 - Annual Salary individuals working a normal thirty-seven and one-half (37.5) hour week will be divided by one thousand nine hundred fifty (1,950) to arrive at hourly billing rates
- c. Allowable Annual Increases
 - Reasonable annual salary increases within published industry standards will be allowed and approved in advance
 - Unusually high proposed increases and increases above published industry standards will be agreed to on a case by case basis.
- d. Sub consultants
Specific billing arrangements will be negotiated with specialty sub-consultants such as the following:
 - Attorneys
 - Financial Advisors
 - Surveyors
 - Subsurface Consultants
 - Specialty Consultants
- e. Vacation/Holidays
 - Included in firm's audited multiplier
- f. Sick Time
 - Included in firm's audited multiplier
- g. Billing for non-productive idle time
 - No billing for vehicle driving time (commuting time)
 - Allow billing during air travel to Pima County for actual time worked on Pima County projects
 - Short-term assignments are negotiable
- 2. Multipliers
 - a. Only audited multipliers following Generally Accepted Accounting Principles (GAAP) or Federal Single Audit principles are allowed
 - b. Corporate, Regional or Local Audited Multipliers of firms will be negotiated for each contract
 - c. Job Site multipliers will be negotiated in the event COUNTY provides office space or job site trailers for CONSULTANT
 - d. County will consider annual audited multipliers or fixed multipliers for the contract period
- 3. Travel Time
 - a. Air Travel
 - Allow only for time spent on aircraft working on Pima County projects
 - b. Land Travel
 - Not allowed from Phoenix Metro Area to Pima County (both ways)
 - Not allowed to and from airports
 - c. Local Travel between meetings and job sites
 - Allowed

4. Expenses
 - a. Mileage (Between Phoenix Metro Area and Pima County)
 - Approve at the established County mileage rate
 - Included in firm's audited multiplier or as other direct cost
 - Mileage for commuting not allowed
 - b. Mileage – local
 - Approve at the established County mileage rate
 - Included in firm's audited multiplier or as other direct cost
 - Mileage for commuting to and from work place not allowed
 - c. Car Rental/Lease/Corporate Vehicles
 - Included in firm's audited multiplier or as other direct cost
 - d. Hotel/Meals
 - Allow only for infrequent call-in of an out of state consultant for a limited period of time
 - Establish daily limits in accordance with Federal Guidelines and negotiable for unusual circumstances
 - Allowed charges to be identified as other direct costs
 - e. IT/ Phone/Internal Delivery Charges/Normal Postage/ Miscellaneous/Other Administrative Charges
 - Include in firm's audited multiplier
 - f. Relocation, second domicile or subsistence expenses
 - Negotiable on a case by case basis
 - g. Reproduction Costs
 - Bill as other direct costs if not in audited multiplier
 - h. All other direct costs will be detailed in the contract billing
5. Unallowable Costs
 - a. Bonus
 - Not allowed as a direct charge or in the multiplier
 - b. Entertainment Costs
 - c. Marketing Costs
 - Only as allowed in audited multipliers
 - d. Non-identifiable Costs
 - e. Donations
 - Only as allowed in audited multipliers
 - f. Mark-up on sub-consultants
 - g. Travel time from Phoenix Metro Area to Pima County (both ways)
 - h. Air travel for commuting purposes
 - i. Interest Expense

- j. Political and Charitable
- k. Contributions Lobbying Costs Fines & Penalties Alcohol
- l. Entertainment, Gifts, Amusement
- m. Contingencies
- n. Bad Debt Expense
- o. Profit Distribution
- p. Public Relations and Related Advertising
- q. Accelerated Depreciation Losses on Other Contracts Organization/Reorganization
- r. Patents
- s. Goodwill
- t. Labor Relations
- u. Labor Expenses Caused by Negligence or Mistakes
- v. Personal Use of Company Assets (Vehicles, e.g.)
- w. Related Party Expenses that Exceed the Costs of Ownership
- x. Unreasonably High Executive Compensation
- y. Unreasonably High Indirect Labor
- z. Unreasonably High Rent
- aa. Bonus not related to employee performance

F. INVOICING

CONSULTANT will submit invoices monthly, at the Monthly Progress Meeting, to the Project Manager, with appropriate supporting data and documentation and in a format as prescribed by the Project Manager. (Acceptance of the invoice at this meeting is not mandatory. The Project Manager may delay approval for up to five (5) work days to review the Progress Report and invoice.). The invoice will tabulate the costs associated with each individual task. All Task (deliverables) and Subcontracted Service costs will be appropriately documented. The Project Manager will review and check the invoice to determine if it is complete and acceptable. If the Project Manager determines the invoice to be complete and acceptable, the Project Manager will approve the invoice and forward it for processing the payment.

Repeated violation of the requirement to submit timely PR in accordance with the terms of this Contract shall result in sanctions including and up to liquidated damages, Contract termination and removal of the offending party or disqualification of the offending Consultant or Subconsultant from participation in future COUNTY projects. COUNTY shall not be obligated to pay invoices that are submitted more than 60 calendar days after the end of the State fiscal year in which costs were incurred.

End of Exhibit “B” Compensation Schedule

**UNIFORM TERMS AND CONDITIONS
FEDERAL AND STATE CONTRACT REQUIREMENTS
(Project Specific Contract With Goals)
EXHIBIT “C” (33 pages)
(ECS Rev 1-28-16)**

SECTION 4.0 UNIFORM TERMS AND CONDITIONS

- 4.1 EMPLOYMENT OF PERSONNEL OF PUBLIC AGENCIES
- 4.2 FEDERAL DEBARMENT AND SUSPENSION
- 4.3 SUBCONTRACTS
- 4.4 ANTI-LOBBYING
- 4.5 RECORDS RETENTION, MAINTENANCE AND AUDIT
- 4.6 REVIEWS AND INSPECTIONS
- 4.7 NONDISCRIMINATION
- 4.8 AFFIRMATIVE ACTION (FOR FEDERAL-AID CONTRACTS)
- 4.9 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (DBE)--
COMMITMENT, COMPLIANCE AND REPORTING
- 4.10 COUNTING DBE PARTICIPATION
- 4.11 PARTICIPTION BY SMALL BUSINESS CONCERNS (SBCs)
- 4.12 ENVIRONMENTAL PROTECTION
- 4.13 ENERGY CONSERVATION
- 4.14 OWNERSHIP OF DATA
- 4.15 FRAUD AND FALSE STATEMENTS
- 4.16 FEDERAL IMMIGRATION AND NATIONALITY ACT
- 4.17 ERRORS AND OMISSIONS
- 4.18 TERMINATION FOR DEFAULT OR CONVENIENCE
- 4.19 PROMPT PAY (A.R.S. §28-411)
- 4.20 FINAL/INCURRED COST AUDIT
- 4.21 CONFLICT OF INTEREST
- 4.22 CONSULTANT/CONTRACTOR CONFLICT OF INTEREST
- 4.23 CONSULTANT OR SUBCONSULTANT ENDORSEMENT OF PLANS
- 4.24 PROFESSIONAL CONDUCT AND PROFESSIONAL REGISTRATION

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

SECTION APPENDICES

- A. PART 26 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS
- A.1 PART 26 – GUIDANCE CONCERNING GOOD FAITH EFFORTS
- B. TITLE VI / NONDISCRIMINATION ASSURANCES (APPENDICES A--E)
- C. INSURANCE AND INDEMNIFICATION REQUIREMENTS

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

4.1 EMPLOYMENT OF FEDERAL HIGHWAY ADMINISTRATION AND PIMA COUNTY'S PERSONNEL

The Contractor shall not employ any person or persons in the employ of the Federal Highway Administration ("FHWA") or of Pima County ("COUNTY") or any of its boards, agencies, or commissions, for any work required by the terms of this Contract, without prior written permission of the Federal Highway Administration or of the State.

4.2 FEDERAL DEBARMENT AND SUSPENSION

- a. By signature on this Contract, the Consultant certifies its compliance, and the compliance of its Subconsultants or subcontractors, present or future, by stating that any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position of authority involving federal funds:
 - 1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal Agency;
 - 2. Does not have a proposed debarment pending;
 - 3. Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal Agency within the past three (3) years; and
 - 4. Has not been indicted, convicted, or had a civil judgment rendered against the firm by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years as specified by Code of Federal Regulations 49 CFR paragraph 29.305(a).
- b. Where the Consultant or its Subconsultant is unable to certify to the statement in Section a.1. above, the Consultant or its Subconsultant shall be declared ineligible to enter into Contract or participate in the project.
- c. Where the Consultant or Subconsultant is unable to certify to any of the statements as listed in Sections a.2., a.3., or a.4., above, the Consultant or its Subconsultant shall submit a written explanation to the Department. The certification or explanation shall be considered in connection with the Department's determination whether to enter into Contract.
- d. The Consultant shall provide immediate written notice to the Department if, at any time, the Consultant or its Subconsultant, learn that its Debarment and Suspension certification has become erroneous by reason of changed circumstances.

4.3 SUBCONTRACTS

The Consultant agrees to execute a written Contract with all Subconsultants for work to be completed under this Contract. The executed Contract shall include Subconsultant's Scope of Work and all the Uniform Terms and Conditions set forth in Section 4.0 of this Contract.

The Consultant shall provide electronic copies of signed subcontract agreements with all Subconsultants to ADOT Business Engagement Compliance Office (BECO) by uploading them to the LPA System) at <https://adot.dbesystem.com>. Subcontract agreements shall include all required assurances and required clauses as outlined in Section 4.0 of this Contract. Each agreement and required attachment shall be dated and signed by the Subconsultant in order for the subcontract to be considered valid.

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

The Consultant shall be in breach of this Contract if the Consultant materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subconsultants. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by COUNTY.

4.4 ANTI-LOBBYING

The Consultant certifies, by signing and submitting the SOQ, to the best of his/her knowledge and belief, that:

- a. No federal appropriated funds have been paid or shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence any officer or employee of any State or 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 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 shall be paid to any person for influencing or attempting to influence an officer or employee of any Federal Agency, a Member of Congress, and 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 the "Disclosure of Lobbying Activities" form in accordance with its instructions (<http://www.whitehouse.gov/omb/grants/sfillin.pdf>).
- c. 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 and entering into this transaction imposed by Section 1352, Title 31 and U.S. 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.
- d. The Consultant also agrees, by submitting its SOQ that it shall require that the language of this certification be included in subcontracts with all Subconsultant(s) and lower-tier Subconsultants which exceed \$100,000 and that all such Subconsultants and lower-tier Subconsultants shall certify and disclose accordingly.
- e. COUNTY shall keep the firm's certification on file as part of its original SOQ. The Consultant shall keep individual certifications from all Subconsultants and lower-tier Subconsultants on file. Certification shall be retained for three (3) years following completion and acceptance of any given project.
- f. Disclosure forms for the Consultant and its Subconsultants and lower-tier Subconsultants shall be submitted to the COUNTY Commodity/Contracts Officer assigned to this Solicitation on the date the Statement of Qualifications are due. The Consultant and each Subconsultant and lower-tier Subconsultant shall file revised disclosure forms at the end of each calendar quarter in which events occur that materially affect the accuracy of any previously filed disclosure form. The Disclosure forms shall be submitted by the COUNTY Representative to ADOT/FHWA for further review.

4.5 RECORDS RETENTION, MAINTENANCE AND AUDIT

- a. Pursuant to A.R.S. §35-214, the Consultant and its Subconsultant(s) shall keep and maintain all books, papers, records, accounting records, files, accounts, expenditure records, reports, cost proposals with backup data and all other such materials related to the Contract and other related project(s). The Consultant shall make all such materials related to the project(s) available at any reasonable time and place during the term of the Contract and for **five (5)** years from the date the

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

Initial Closeout Letter is sent to the Consultant after COUNTY indicates that work on the Contract has been completed to the satisfaction of COUNTY. All Documents shall be retained for auditing, inspection and copying upon COUNTY's, ADOT's or at FHWA's request, or any other authorized representative of the Federal Government.

- b. Pursuant to A.R.S. §35-215, the Consultant and its Subconsultant(s) with intent to defraud, deceive, improperly influence, obstruct or impair an audit being conducted or about to be conducted in relation to any Contract or subcontract with the Department is guilty of a Class 5 Felony.
- c. In case of an audit and the Consultant has failed to retain records in accordance with the applicable Contract provision, it shall be presumed that the documents would not have supported the Consultant's position. Therefore, failure to retain such records shall result in the Consultant being required to reimburse ADOT for unsupported costs. The Consultant may also be disqualified per revised ECS Rules Section 2.02 from submitting future SOQ proposals.
- d. Upon completion and final closeout of the Contract, physical/paper or electronic Contract files and any supporting materials shall be maintained in accordance with COUNTY, ADOT and State Record Retention Center Records Retention/Destruction Policy and Schedules.

4.6 REVIEWS AND INSPECTIONS

Representatives from COUNTY, ADOT and FHWA are authorized to review and inspect the Contract activities and facilities during the Consultant's and its Subconsultants normal business hours.

4.7 NONDISCRIMINATION

- 1. During the performance of this Contract, the Consultant, for itself, its Subconsultants, assignees and successors shall:
 - a. Not discriminate on the basis of race, color, national origin, or sex and shall carry out applicable requirements of 49 CFR Part 26 in the performance of this Contract. Failure by the Consultant 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 State deems appropriate, which may include, but are not limited to:
 - i. Withholding monthly progress payments;
 - ii. Assessing sanctions;
 - iii. Liquidated damages;
 - iv. Disqualifying the consultant from future bidding as non-responsible;
 - v. Cancellation, termination, or suspension of the Contract, in whole or in part.

The Consultant, Subconsultant, subrecipient and/or subcontractor shall ensure all subcontract agreements contain the Nondiscrimination Assurances.

- b. Comply with Executive Order 2009-09, "Prohibition of Discrimination in Employment by Government contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

- c. Comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.
 - d. Post in conspicuous places available to employees and applicants for employment, the following notice:

"It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying-off or termination; rates of pay or other compensation; and selection for training, and on-the-job training. Also, it is the policy to insure and maintain a working environment free of harassment, intimidation and coercion."
 - e. Comply with Appendix A through E of the Arizona Department of Transportation "Title VI/Non-Discrimination Assurances" as found in Appendix B of this Contract.
2. The Consultant shall include the provisions of Section 4.08 of this Contract, paragraph 1.a. through 1.e. and Appendix B of this Contract in every subcontract with Subconsultants, DBEs and Non-DBEs, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.
 3. The Consultant shall take such action with respect to any Subconsultants or procurement as the State or the Federal Aviation Administration (FAA), FHWA and the Federal Transit Administration (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with a Subconsultant or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

4.8 AFFIRMATIVE ACTION (FOR FEDERAL-AID CONTRACTS)

The Consultant shall take the following affirmative action steps with respect to securing supplies, equipment or services under the terms of this Contract:

1. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.
2. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.
4. Where the requirement permits, establish delivery schedules which shall encourage participation by firms owned by socially and economically disadvantaged individuals.

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5. Use the services and assistance of ADOT DBE Supportive Services Program, the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as needed.

4.9 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES – COMMITMENT, COMPLIANCE AND REPORTING

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

It is ADOT's policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded contracts. It is also ADOT's policy to:

- a. Ensure nondiscrimination in the award and administration of federally-funded contracts;
- b. Create a level playing field on which DBEs can compete fairly for federally-funded contracts;
- c. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
- d. Ensure that only firms that fully meet 49 CFR Part 26 eligibility requirements are counted as DBEs;
- e. Help remove barriers to the participation of DBEs in federally-funded contracts; and
- f. Assist in the development of firms that can compete successfully in the marketplace.
- g. It is also ADOT's policy to facilitate and encourage participation by all Business Concerns (SBCs) in COUNTY and ADOT contracts. ADOT encourages Consultants to take reasonable steps to eliminate obstacles to SBC's participation and to utilize SBCs in performing contracts. See section 4.49.

The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends to meet the goal with a combination of race-conscious efforts and race-neutral efforts. Race-conscious participation occurs where the Consultant uses a percentage of DBEs to meet a contract-specified goal. Race-neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses.

The Consultant is required to adhere to the commitment made to utilize certified Disadvantaged Business Enterprises (DBE) as indicated in the firm's Statement of Qualifications (SOQ) or subsequently agreed to by COUNTY during negotiations. The State, at its discretion on a case by case basis, may waive the above limitations.

2. DBE GOAL/COMMITMENT AND DOCUMENTATION:

- a. DBE GOAL OF 9.28% HAS BEEN ESTABLISHED ON THIS CONTRACT. THE CONSULTANT IS ENCOURAGED TO OBTAIN DBE PARTICIPATION ABOVE AND BEYOND THE GOAL ON THIS PROJECT.
- b. The Consultant is required to adhere to the commitment made to utilize certified DBEs as indicated in the firm's Statement of Qualifications (SOQ) or the Consultant and Subconsultant DBE Affidavits submitted, or subsequently agreed to by the State during negotiations. The State,

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at its discretion on a case-by-case basis, may waive the above limitations.

- c. The Consultant is also required to utilize DBEs at or above the DBE goal established in this Contract if Contract Modifications increase the value of the Contract. If ADOT determines that the Consultant has not met the DBE goal or has not made an adequate good faith effort to meet the DBE goal as Contract Modifications increase the value of the Contract, ADOT reserves the right to disapprove the Contract Modification negotiations with the firm. If the Consultant wishes to dispute the Good Faith Effort determination, the Consultant may escalate the decision according to the levels outlined in Article 27 (DISPUTES) of this Contract. The ADOT Business Engagement Compliance Office (BECO) will be represented at each escalation level with the goal of resolving the matter at the lowest possible level. **The decision of the BECO is final.**

3. COMPLIANCE:

- a. This Contract is subject to DBE compliance tracking for the Consultant and its Subconsultants. Lower-tier Subconsultants and Vendors are required to provide any requested DBE Contract compliance-related data in hard copy or electronically as determined by the State, including written agreements between the Consultant and Subconsultant DBEs. The Consultant shall report the amount earned by and paid to each DBE and Non-DBE Subconsultants working on the project for the preceding month on each monthly Progress Payment Report. The Consultant is responsible for ensuring that the Consultant and all its Subconsultants and lower-tier Subconsultants have completed all requested items and that their contact information is accurate and up-to-date.
- b. The Consultant's achievement of the DBE goal is measured by actual payments made to the DBEs. At the completion of the project, the Consultant shall complete and submit a *Certification of Payments to DBE Firms* affidavit for each DBE firm working on the project. This affidavit shall be signed by the Consultant and the relevant DBE Subconsultant and submitted to COUNTY and BECO.

4. REPORTING AND SANCTIONS:

- a. ADOT is required to collect DBE participation data on all Federal-aid projects, whether or not there is a stated DBE goal/commitment on this Contract. Therefore, the Consultant shall report the monthly payments made to all DBE, Non-DBE Subconsultants and Direct Expense Vendors, including all lower-tier Subconsultants, for labor, equipment, and materials. If the Consultant and its Subconsultants do not provide all required DBE usage and payment information with the monthly Progress Payment Reports (PRs) submittals for the preceding month, COUNTY shall deduct \$1,000 for each delinquent report, whether from the Consultant or any of its Subconsultants, from the progress payment for the current month, not as a penalty but as liquidated damages. If by the following month, the required DBE payment information for the previous month has still not been provided, COUNTY shall deduct an additional \$1,000 for each delinquent report. Such deductions shall continue for each subsequent month that the Consultant or its Subconsultants fail to provide the required payment information.
- b. DBEs shall confirm the payments received from the Consultant through the LPA Contract Management System (**LPA System**).
- c. After execution of this Contract and before the first Payment Report/Invoice is submitted to COUNTY, the Consultant is required to log into the LPA System

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(<https://adot.dbesystem.com>) and enter the name, contact information, and subcontract amounts for all Subconsultants, lower-tier Subconsultants and Direct Expense vendors performing any work on the project to help ADOT track and monitor payments to DBE and Non-DBE Subconsultants on the project and to confirm that the scope of services and commitments made via the DBE Intended Participation Affidavits are being met.

- d. All DBE and non-DBE subcontracting activities and payments shall be reported by the Consultant. All DBE subcontracting activities will be counted toward DBE participation. This includes lower-tiers subcontracting activities regardless of whether or not the DBE is under contract with another DBE.
- e. At the completion of this Contract, the Consultant shall submit a *Certification of Payments to DBE Firms* affidavit certifying that all DBEs were paid in full for material and/or work promised and performed under the terms of this Contract.

5. **DBE SUBSTITUTION OR REPLACEMENT:**

- a. The Consultant shall not terminate a DBE Subconsultant listed in the SOQ or in the Consultant or Subconsultant DBE Affidavit submitted with each approved Task Order without the prior written approval by COUNTY and BECO.
- b. If a Subconsultant is terminated, or fails to complete its work on this Contract for any reason, the Consultant shall make a good faith effort to find another DBE to perform at the least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the DBE commitment percentage established in this Contract.
- c. COUNTY, at its sole discretion, may terminate the Contract at any time if the Department determines that the Consultant is not satisfactorily meeting the DBE goal/commitment stated in the Contract or is not making satisfactory good faith efforts to meet the goal.

4.10 **COUNTING DBE PARTICIPATION**

In counting the DBE participation, COUNTY shall apply the rules in 49 CFR §26.55 (APPENDIX) as a supplement herein. The firm shall count only the value of the work actually performed by the DBE toward DBE goals. No credit shall be allowed for shipping, manufacturing or supply.

- 1. Contracts created to artificially create DBE participation are not acceptable; the arrangement shall be within normal industry practices. The DBE shall perform a commercially useful function.
- 2. Count the entire amount of that portion of a Contract (or other Contract not covered by paragraph (2) of this section) that is performed by the DBE's own forces. Firms shall include the cost of supplies and materials obtained by the DBE for the work on the Contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE Subconsultant purchases or leases from the Consultant or its affiliate).
- 3. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specially required for the performance of a DOT-assisted contract, toward DBE goals, provided the fee is determined to be reasonable and not excessive as compared with the fees customarily allowed for similar services.

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4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the lower-tier Subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE does not count toward DBE goals.
5. It is presumed that the DBE is not performing a **commercially useful function** if: (a) a DBE does not perform or exercise responsibility for **at least 30 percent (30%)** of the total cost of its Contract with its own work force; or (b) 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.

4.11 PARTICIPATION BY SMALL BUSINESS CONCERNS (SBC)

It is ADOT's policy to facilitate and encourage participation by Small Business Concerns (SBCs) in COUNTY and ADOT contracts. ADOT encourages Consultants to take reasonable steps to eliminate obstacles to SBC's participation and to utilize SBCs in performing contracts.

Consultant shall take all reasonable steps to remove obstacles to SBC participation in the Contract. ADOT encourages the Consultant to utilize SBCs. SBCs are registered in [AZ UTRACS](#).

4.12 ENVIRONMENTAL PROTECTION

(This clause is applicable if this Contract exceeds \$100,000. It applies to Federal-aid contracts only.)

The Consultant is required to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the FHWA and to the U.S. EPA Assistant Administrator for Enforcement (EN-329).

4.13 ENERGY CONSERVATION

(This clause is applicable to Federal-aid contracts only.)

The Consultant is required to comply with mandatory standards and policies, as applicable, relating to energy efficiency, which is contained in the State Energy Conservation Plan issued by the Department in compliance with the Energy Policy Conservation Act (Public Law. 94-163).

4.14 OWNERSHIP OF DATA

- a. The Consultant agrees to maintain (in sufficient detail as shall properly reflect all work done and results achieved in the performance of this Contract) tracings, plans, specifications and maps, basic survey notes and sketches, books, records, reports, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, computer programs and documentation thereof, and other graphic or written data generated in connection with the work required in the Contract; all such information and documentation to be termed "Data" under this Contract.
- b. All data procured hereunder for the work funded by COUNTY shall become the property of COUNTY and delivered to COUNTY upon request and shall not be used or released by the Consultant or any other person except with the prior written approval by COUNTY, provided the Consultant shall not be required to retain any Data not requested by COUNTY within five (5) years from the date of final payment to the Consultant hereunder; and provided further that until such delivery to COUNTY, the Consultant agrees to permit COUNTY, ADOT and FHWA representatives to examine and review at reasonable times all Data still in the possession of the Consultant.

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- c. All services, information, computer program elements, reports and other deliverables which may be patented or copyrighted and created under this Contract are the property of COUNTY and shall not be used or released by the Consultant or any other person except with the prior written approval by COUNTY.

4.15 FRAUD AND FALSE STATEMENTS

The Consultant understands that, if the project which is the subject of this Contract is financed in whole or in part by federal funds, that if the undersigned, the company that the Consultant represents, or any employee or agent thereof, knowingly makes any false statement, representation, report or claim as to the character, quality, quantity, or cost of material used or to be used, or quantity or quality work performed or to be performed, or makes any false statement or representation of a material fact in any statement, certificate, or report, the Consultant and any company that the Consultant represents may be subject to prosecution under the provision of 18 USC §1001 and §1020.

4.16 FEDERAL IMMIGRATION AND NATIONALITY ACT

a. GENERAL

The Consultant, including all Subconsultants, shall comply with all federal, state and local immigration laws and regulations, as set forth in Arizona Executive Order 2005-30, relating to the immigration status of their employees who perform services on the Contract during the duration of the Contract. COUNTY shall retain the right to perform random audits of Consultant and Subconsultants' records or to inspect papers of any employee thereof to ensure compliance.

The Consultant shall include the provisions of this Section in all its subcontracts. In addition, the Consultant shall require that all Subconsultants comply with the provisions of this Section, monitor such Subconsultants' compliance, and assist the Department in any compliance verification regarding its Subconsultant(s).

b. COMPLIANCE REQUIREMENTS

The Department retains the legal right to inspect the papers or records of the Consultant and its Subconsultants who works on this Contract to ensure compliance with A.R.S. §41-4401, Government Procurement, E-Verify Requirements; Sanctions.

By submission of an SOQ proposal, the Consultant warrants that the Consultant and all proposed Subconsultant(s) are and shall remain in compliance with:

1. All federal, state and local immigration laws and regulations relating to the immigration status of their employees who perform services on the Contract; and
2. A.R.S. §23-214 (A) which states "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer."

A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract, and the Consultant and its Subconsultant(s) are subject to sanctions specified in Section D below.

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Failure to comply with a Department audit process to randomly verify the employment records of Consultant and Subconsultants shall be deemed a material breach of the Contract, and the Consultant and Subconsultants are subject to sanctions specified in Section d below.

c. COMPLIANCE VERIFICATION

The State may, at its sole discretion, require evidence of compliance from the Consultant and its Subconsultant(s).

Should the Department request evidence of compliance, the Consultant shall complete and return the Consultant Employment Record Verification Form and Employee Verification Worksheet provided by the Department, no later than 21 days from receipt of the request for such information.

Listing of the compliance verification procedure specified above does not preclude the Department from utilizing other means to determine compliance.

The Department retains the legal right to inspect the papers of any employee who works on the Contract to ensure that the Consultant and its Subconsultant(s) is/are complying with the warranty specified in this Section.

d. SANCTIONS FOR NONCOMPLIANCE

For purposes of this paragraph, noncompliance refers to either the Consultants or its Subconsultants' failure to follow the immigration laws or to the Consultant's failure to provide records when requested. Failure to comply with the immigration laws or to submit proof of compliance constitutes a material breach of Contract. At a minimum, the Department shall reduce the Consultant's compensation by \$10,000 for the initial instance of noncompliance by the Consultant or its Subconsultant(s). If the same Consultant or its Subconsultant(s) is in noncompliance within two (2) years from the initial noncompliance, the Consultant's compensation shall be reduced by a minimum of \$10,000 for each instance of noncompliance. The third instance by the same Consultant or its Subconsultant(s) within a two (2) year period may result in addition to the minimum \$50,000 reduction in compensation, in removal of the offending Consultant or its Subconsultant(s), suspension of work in whole or in part or, in the case of a third violation by the Consultant, termination of the Contract for default. Instances of noncompliance are counted on a firm-wide basis, not on a contract-by-contract basis.

In addition, the Department may declare the Consultant or its Subconsultant(s) who is in noncompliance three times within a two (2) year period ineligible to perform on any Department Contract for up to one (1) year. For purposes of considering a declaration of ineligibility: (1) noncompliance by a Subconsultant does not count as a violation by the Consultant; and (2) the Department shall count instances of noncompliance on other Department Contracts.

The sanctions described herein are the minimum sanctions. In case of major violations, the Department reserves the right to impose any sanctions including and up to termination and debarment, regardless of the number of instances of non-compliance.

Any delay resulting from compliance verification or a sanction under this subsection is a non-excusable delay. The Consultant is not entitled to any compensation or extension of time for any delays or additional costs resulting from compliance verification or a sanction under this Section.

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An example of the minimum sanctions under this subsection is presented in the table below:

Offense by:			Minimum Reduction in Compensation
Consultant	Subconsultant A	Subconsultant B	
First			\$10,000
	First		\$10,000
	Second		\$50,000
		First	\$10,000
	Third		\$50,000*

* May, in addition, result in removal and debarment of the Subconsultant.

4.17 ERRORS AND OMISSIONS

If COUNTY determines that the Consultant had made any errors and/or omissions (E&O) in the work product delivered to COUNTY under the terms of this Contract, the Consultant shall make all necessary revisions or corrections resulting from E&O without additional cost to COUNTY. Errors and Omissions is defined as a deviation from the standard of care on the part of a design engineering consultant in the performance of architectural and/or engineering services under this Contract. COUNTY shall actively pursue the resolution of E&Os at the lowest possible level within a reasonable timeframe in accordance with the most current version of COUNTY’s Errors and Omissions procedure.

If COUNTY determines that the Consultant had made any Errors and/or Omissions (E&Os), in the work product delivered to COUNTY, under the terms of this Contract, the Consultant is immediately notified of the E&O, verbally and followed up in writing, and invited to participate in corrective actions in order to mitigate the cost. No waiver, release, or settlement of claims or potential claims against a Consultant shall be valid without written approval of COUNTY’s Senior Management, when project is funded with federal funds. When claims are resolved, COUNTY will notify all parties in writing.

4.18 TERMINATION FOR DEFAULT OR CONVENIENCE

a. Termination for Default

COUNTY may terminate the Contract for default under the following circumstances:

1. Consultant’s failure to perform the services as detailed herein and in any modifications to the Contract.
2. Consultant’s failure to complete the Contract within the timeframe specified herein and in any modifications to the Contract.
3. Consultant’s failure to comply with any of the material terms of the Contract.

If COUNTY contemplates termination under the provisions of Subsections a.1., a.2., or a.3. above, COUNTY shall issue a written notice of default describing the deficiency. The Consultant shall have five (5) business days to cure such deficiency. In the event the Consultant does not cure such deficiency, COUNTY may terminate the Contract without further consideration by issuing a Notice of Termination for Default and may recover compensation for damages.

If, after the Notice of Termination for Default has been issued, it is determined that the Consultant was not in default or the termination for default was otherwise improper, the termination shall be deemed to have been a Termination for Convenience.

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b. Termination for Convenience

COUNTY may terminate the Contract for convenience, in whole or in part, when, for any reason, COUNTY determines that such termination is in its best interest. The Contract termination is effected by notifying the Consultant, in writing, specifying that all or a portion of the Contract is terminated for convenience and the termination effective date. The Consultant shall be compensated only for work satisfactorily completed prior to the termination of the Contract. The Consultant is not entitled to loss or profit. The amount due to the Consultant is determined by COUNTY.

In the event of termination for convenience, COUNTY shall be liable to the Consultant only for Consultant's work performed prior to termination and only to the extent and as provided in ARTICLE 19 of the Contract.

c. The Agency's Right to Proceed with Work

In the event this Contract is terminated, COUNTY shall have the option of completing the Contract or entering into an agreement with another party to complete services outlined in the Contract.

4.19 PROMPT PAY LAW (A.R.S. §28-411)

In accordance with the Arizona Prompt Payment Law (A.R.S. §28-411), COUNTY shall issue payments to Consultants within 21 calendar days after receipt of complete and accurate Payment Report (PR) unless proper objection is made under the statute. The law also requires the Consultant to pay their Subconsultants within seven (7) calendar days after receiving payment from COUNTY, to the extent of each Subconsultant's contractual interest in the payment, subject to provision of the statute.

Incomplete or incorrect PR shall be returned to the Consultant within seven (7) calendar days of receipt by COUNTY. The 21 calendar-day payment timeframe shall begin anew upon receipt of the complete and corrected PR.

COUNTY shall not withhold retention on progress payments; however, if satisfactory progress has not been made on the project, the Department may first retain a maximum of 10% of the current and subsequent billings. If unsatisfactory progress continues for a second subsequent month, the Department may, at its sole option, refuse to make progress payment(s) of such sums, which COUNTY considers necessary. This provision shall not limit COUNTY's rights to terminate the Contract for default.

The Consultant shall not withhold the Subconsultant's payment if COUNTY has paid the full value of services rendered. Failure by the Consultant to invoice COUNTY in accordance with the terms of the Contract and/or pay its Subconsultants in accordance with the Arizona Prompt Pay Law is a material breach of the Contract and the Consultant shall be subject to disqualification in accordance with Article 4 of COUNTY's Contract. COUNTY reserves the right to request that Consultant provides proof of payment to its Subconsultants.

The Consultant shall be found to be in breach of the Contract if it executes subcontract agreements with Subconsultants, DBE and non-DBE, which materially change the Prompt Pay requirement. This action may result in termination of the Contract, or any other such remedy as deemed appropriate by COUNTY.

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

- a. Withholding monthly progress payments;

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- b. Assessing sanctions;
- c. Liquidated damages;
- d. Disqualifying the contractor from future bidding as non-responsible;
- e. Cancellation, termination, or suspension of the Contract, in whole or in part.

4.20 FINAL/INCURRED COST AUDIT

- a. Final/Incurred Cost Audit (ICA) of the Consultant's costs may be performed by COUNTY Audit and Analysis to determine the Contract costs' allowability, allocability, and reasonableness in accordance with the terms of the Contract before it is closed. COUNTY's final audit process is according to COUNTY's Contract Award and Administration Guidelines for Federal-Aid Projects Funded by FHWA
http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Procurement/Vendor%20Relations/Pima%20County%20Design%20Contract%20Guidelines%20for%20FHWA%20Projects_Oct2016.pdf
- b. A CPA-prepared overhead schedule or a Cognizant Audit Report that meets ADOT/AASHTO/FHWA guidelines is acceptable for establishing a given year's overhead rate with the concurrence of COUNTY's Office of Audit & Analysis.
- c. Upon receipt of an ICA draft report, the Consultant has 14 calendar days to respond to the Incurred Cost Auditor with any disagreements, questions, or request for additional supporting documentation. A time extension may be allowed, if requested in writing within the 14-day timeframe, by the appropriate parties. Disagreements related to the results of the ICA draft report shall be addressed or resolved with the Incurred Cost Auditor on or before the date of the formal Exit Conference with the Incurred Cost Auditor and the Consultant. Non-response to the draft audit report after the 14-day timeframe and after the Exit Conference will be deemed by Agency Audit and Analysis as the Consultant's acceptance of the findings in the draft report. The ICA report shall be issued by Agency Audit and Analysis to the Consultant after Agency Audit and Analysis review and approval. Once the audit report is issued, Agency Audit and Analysis shall not re-examine any new issues not addressed in the draft report and/or formal Exit Conference. The Consultants disagreeing with the ICA report has the option of escalating the matter in accordance with the COUNTY's Pre-Award/ICA Escalation Guidelines process.
- d. COUNTY or the Consultant shall reimburse either party in accordance with the ICA results. Failure of the Consultant to reimburse COUNTY for over-billed charges based on the results of the Pre-award Reviews or ICAs shall result in disqualification of the Consultant in accordance with ARTICLE 4 of the COUNTY'S Contract.

4.21 CONFLICT OF INTEREST

- a. The Consultant shall not engage the services on the Contract of any present or former COUNTY employee who was involved as a decision maker in the selection or approval processes or who negotiated and/or approved billings or Contract modifications for the Contract.
- b. The Consultant agrees that no public or private interest exists and none shall be acquired directly or indirectly which would conflict in any manner with the performance of the Contract.
- c. COUNTY must disclose in writing any potential conflict of interest to the Federal award agency or pass-through entity in accordance with applicable Federal awarding agency policy.

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4.22 CONSULTANT/CONTRACTOR CONFLICT OF INTEREST

- a. No Contract for the construction of a project shall be awarded to the Consultant that designed the project, or its subsidiaries, affiliates, parent company or Subconsultants, except with the written approval by COUNTY.
- b. The applicability of the above also applies to a Management and/or General Consultant or any of its subsidiaries, affiliates, parent company or Subconsultants that were involved in any aspect of the design phase.
- c. The Consultant agrees that it shall not perform services on this project for subconsultants or any supplier in accordance with COUNTY Conflict of Interest Policy.
- d. The Consultant shall not negotiate, contract, or make any agreement with subconsultants or any supplier with regard to any of the work under the Contract, or any services, equipment or facilities to be used on the Contract.

4.23 CONSULTANT OR SUBCONSULTANT ENDORSEMENT OF PLANS

Pursuant to the Arizona Administrative Code (A.A.C.) R4-30-304 (Use of Seals), which is incorporated herein by reference and hereby made a part of this Contract, the Consultant shall affix a proper engineer's seal to all plans, reports and engineering data furnished under this Contract.

4.24 PROFESSIONAL CONDUCT AND PROFESSIONAL REGISTRATION

The Consultant shall comply with the "Rules of Professional Conduct" provision pursuant to A.A.C. R4-30-301, which is incorporated herein by reference and hereby made a part of this Contract.

The Consultant shall comply with the "Registration as an Architect, Assayer, Engineer, Geologist, Landscape Architect, or Land Surveyor" provision pursuant to A.A.C. R4-30-201, which is incorporated herein by reference and hereby made a part of this Contract.

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

APPENDIX "A" TO EXHIBIT "C" (6 PAGES)

TITLE 49 - TRANSPORTATION Subtitle A – Office of the Secretary of Transportation

PART 26 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

[Code of Federal Regulations]; [Title 49, Volume 1]; [Revised as of October 1, 2008]
From the U.S. Government Printing Office via GPO Access; [CITE: 49CFR26.55]; [Page 300-302]

Subpart C Goals, Good Faith Efforts, and Counting

§26.55 - How is DBE participation counted toward goals?

- (a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
 - (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - (2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- (b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you shall examine similar transactions, particularly those in which DBEs do not participate.
 - (3) If a DBE does not perform or exercise responsibility for at **least 30 percent** of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would

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be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

- (4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- (5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.
- (d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
 - (1) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - (2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it shall obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

- (6) For purposes of this paragraph (d), a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.
- (e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
 - (1) (i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
 - (ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - (2) (i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
 - (ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - (A) To be a regular dealer, the firm shall be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

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- (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by- contract basis.
- (C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).
- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
- (f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in Sec. 26.87(i).
- (g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
- (h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

APPENDIX A.1 to Part 26

GUIDANCE CONCERNING GOOD FAITH EFFORTS

NOTE: In the following section of the Federal requirements the “you” means the agency (COUNTY).

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own

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forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

- D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

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

- E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

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

- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

- I. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in §26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

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

[79 FR 59600, Oct. 2, 2014]

NOTE: Contacting the COUNTY for assistance in identifying certified DBEs that can perform work on a contract or task order is also considered a strong factor in making good faith efforts.

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

APPENDIX "B" TO EXHIBIT "C" (5 PAGES)

Pima County Department of Transportation Title VI Assurances

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

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation--Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- 23 C.F.R. Part 200 Subchapter C-Civil Rights (Title VI program implementation and related statues)

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

General Assurances

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

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

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

Specific Assurances

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

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

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

"The Pima County Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

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

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

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

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

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

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

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

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

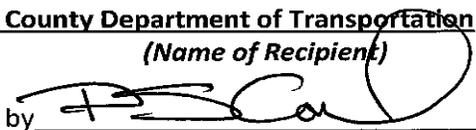
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors,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

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

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

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

Pima County Department of Transportation
(Name of Recipient)

by 
(Signature of Authorized Official)

DATED 10/15/14

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

APPENDIX A

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

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

A

UNIFORM TERMS AND CONDITIONS FEDERAL AND STATE CONTRACT REQUIREMENTS (Project Specific Contract With Goals)

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 *et seq.*).

E

**UNIFORM TERMS AND CONDITIONS
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APPENDIX “C” TO EXHIBIT “C” – INSURANCE AND INDEMNIFICATION REQUIREMENTS**

This Appendix has been omitted – Refer to Section III, Attachment 3, Articles 7 & 8

APPENDIX D to EXHIBIT “C” (1 Page)

CONSULTANT EVALUATION SCHEDULE

Consultant evaluations provide a performance evaluation process which is intended to provide an incentive for Consultants to enhance the quality, timeliness, responsiveness, and cost effectiveness of consulting services provided to the County. The performance evaluation completed by the individual departments shall be used Countywide in the performance evaluation process.

Design Consultants

During construction and other post-design activities, the County's PM will track the impact the design has on the work and conduct a final evaluation at the end of construction that takes into account the impact on construction of design errors or omissions, owner requested changes, and changed conditions, including consideration of disruption or delays in construction, the number of change orders and additional costs attributable to each, and the consultant's response to design errors and omissions. The Project Manager shall complete a DD Form 2631 in conjunction with project closeout and send a copy to the Design and Construction Division. Completed consultant evaluations will provide an additional source of past performance information in qualifications-based selections and may also be considered as one factor in the selection of Consultants.

End of Exhibit “C” Uniform Terms and Conditions

EXHIBIT “D”

PROFESSIONAL SERVICES DBE PROVISIONS (17 Pages)

(LPA PS EPRISE, 6/23/2016)

DISADVANTAGED BUSINESS ENTERPRISES:

1.0 Policy:

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

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

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

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined in Subsection 3.0, in USDOT-assisted contracts. The Department encourages consultants to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

Local Public Agencies (LPA) and or Subrecipients of Federal financial assistance will administer and manage the contracts from advertising, consultant selection, negotiation, contract execution, processing payment reports and contract modifications, audits, DBE compliance (e.g., reporting and monitoring) through contract closeout.

2.0 Assurances of Non-Discrimination:

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

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages;
4. Disqualifying the consultant from submitting SOQs, or any other forms of proposals, as non-responsible;
5. Cancellation, termination, or suspension of the Contract, in whole or in part.

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

3.0 Definitions:

- (A) **Commercially Useful Function (CUF):** Commercially Useful Function is defined fully in 49 CFR 26.55, which definition is incorporated herein by reference.
- (B) **Committed DBE:** A DBE that was identified by the consultant, typically on a DBE Affidavit, to meet an assigned DBE goal as a condition of contract award and performance, and includes any substitute DBE that has subsequently been committed work to meet the assigned contract goal.
- (C) **Disadvantaged Business Enterprise (DBE):** a for-profit small business concern which meets both of the following requirements:
 - (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,
 - (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (D) **NAICS Code:** The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.
- (E) **Non-DBE:** any firm that is not a DBE.
- (F) **Race-Conscious (RC):** a measure or program focused specifically on assisting only DBEs, including women-owned DBEs.
- (G) **Race-Neutral (RN):** a measure or program used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
- (H) **Small Business Concern (SBC):** a business that meets all of the following conditions:
 - (1) Operates as a for-profit business registered to do business in Arizona;
 - (2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;
 - (3) Is independently owned and operated;
 - (4) Is not dominant in its field on a national basis; and
 - (5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.
- (I) **Socially and Economically Disadvantaged Individuals:** any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
 - (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.
 - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are enrolled members of federally or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) "Women;"
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

4.0 Working with DBEs:

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

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

4.01 Mentor-Protégé Program

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

The Mentor-Protégé program is intended to increase legitimate DBE activities and is not intended to diminish nor circumvent existing DBE rules or regulations.

5.0 Applicability:

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

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

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

6.0 Certification and Registration:

6.01 DBE Certification:

Certification as a DBE shall be predicated on:

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

Applications for certification may be filed online with the Department or the applicable UCP agency at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at <http://www.azutracs.com>.

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

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

The Department's certification of a DBE is not a representation of qualifications and/or abilities nor does it mean that a DBE firm is guaranteed or entitled to receive or be awarded a contract. Being certified simply means that a firm has met the criteria for DBE certification as outlined in 49 CFR Part 26. The consultant bears all risks of ensuring that DBE firms selected by the consultant are able to perform the work.

6.02 SBC Registration:

To comply with 49 CFR Part 26.39, ADOT's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for-profit businesses

authorized to do businesses in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code

While the SBC component of the DBE program does not require utilization of goals on projects, ADOT and the LPA/Subrecipient strongly encourages consultants to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement. The consultant may use the AZ UTRACS website to search for certified DBEs and registered SBCs that can be used on the contract. However, SBCs that are not DBEs will not be counted toward the DBE contract goal.

SBCs can register online at the AZ UTRACS website.

The Department's registration of SBCs is not a representation of qualifications and/or abilities nor does it mean that an SBC firm is guaranteed or entitled to receive or be awarded a contract. Being SBC registered simply means that a firm has met the criteria for SBC registration as outlined in 49 CFR Part 26. The consultant bears all risks of ensuring that SBC firms selected by the consultant are able to perform the work.

7.0 DBE Financial Institutions:

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

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

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS

9.0 Computation of Time:

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

10.0 Consultant and Subconsultant Requirements:

10.01 General:

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

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

10.02 DBE Liaison:

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

11.0 DBE Goal:

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

9.28 Percent

The percentage of DBE participation shall be based on the total dollar value of the contract.

Proposers are strongly encouraged to secure and include sufficient DBE firms on their team for multiple disciplines and work categories to ensure they can meet the DBE goal on the contract and for any Contract Modifications that are executed post-award. The DBE goal requirements extend to additional dollars added by Contract Modification to help ensure that the overall DBE goal is met on the contract. Indicating there is no DBE firm on a prime proposer's team to meet the DBE goal on Contract Modifications does not meet the criteria for Good Faith Efforts in 49 CFR 26.53, and will not be accepted by the Department as Good Faith Efforts when Contract Modifications are issued. Since proposers have been notified of the DBE goal prior to the submittal of their Statement of Qualifications (SOQ) they are required to do their due diligence to secure enough DBE participation to meet the goal or make good faith efforts on the contract and each subsequent Contract Modification. Firms will be required to locate DBEs to meet the goal on each Contract Modification even if these DBEs were not originally included as part of their team, if the LPA/Subrecipient, with BECO concurrence, determines there are qualified DBEs available to complete portions of the work of the Contract Modification.

12.0 Submission with SOQ Proposals:

12.01 DBE Assurance/Goal Declaration

In order to be awarded this contract, in addition to all other pre-award requirements, all proposers are required to certify on the DBE Assurance form (SFQ Section III, Attachment 1) provided by the LPA/Subrecipient (COUNTY) that:

The proposer will meet the established DBE goal or will make good faith efforts to meet the goal and that arrangements with certified DBEs have been made prior to the SOQ and/or cost proposal submission.

Failure to affirmatively make this declaration/certification in the manner outlined in the Solicitation for Qualifications (SFQ) furnished by the LPA/Subrecipient will cause a Proposer's SOQ to be considered non-responsive.

12.02 Bidders/Proposers List and AZ UTRACS Registration Requirement:

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

Prime consultants and all subconsultants, including DBEs listed in the SOQ must be registered in AZ UTRACS. Proposers may verify that their firm and each subconsultant is registered using the AZ UTRACS website.

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

All proposers shall create a Bidders/Proposers list in the AZ UTRACS by selecting all firms, service providers, and vendors that expressed interest or submitted proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subconsultants, service providers, and vendors that submitted proposals or quotes on this project regardless of the proposer's intentions to use the those firms on the project.

All proposers must complete and submit the Bidders/Proposers List online at AZ UTRACS prior to Cost Proposal submittal. A confirmation email will be generated by the system. This email confirmation shall be submitted with the Cost Proposal.

FAILURE TO SUBMIT THE REQUIRED BIDDERS/PROPOSERS LIST CONFIRMATION EMAIL WITH THE COST PROPOSAL BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED AND AS OUTLINED IN THE RFQ SHALL BE CAUSE FOR THE PROPOSER'S COST PROPOSAL TO BE REJECTED.

13.0 DBE Cost Proposal Submissions:

13.01 DBE Intended Participation Affidavits:

If the proposer indicates in the Cost Proposal submittal that it has met or exceeded the DBE goal, a DBE Intended Participation Affidavit form for each DBE firm, and the DBE Intended Participation Affidavit Summary form shall be submitted to the LPA/Subrecipient Procurement Office with each Cost Proposal as follows:

- (1) The DBE Intended Participation Affidavit Form must be submitted for each individual DBE firm at all tiers, including direct expense vendors, that is being proposed to be used to meet the DBE goal on the project. A copy of this form is available from the LPA/Subrecipient.
- (2) The DBE Intended Participation Affidavit Summary Form must be completed by the consultant summarizing information about all DBEs being proposed to meet the DBE goal that are listed on each DBE Intended Participation Affidavit Form. The DBE Intended Participation Affidavit Summary Form, along with the DBE Intended Participation Affidavit form for each individual DBE firm, must be submitted together with the Cost Proposal to the LPA/Subrecipient Procurement Office. All forms must be accurate and complete in every detail and must be signed by an officer of the consultant(s). Percentages and dollar amounts must be accurate. Percentages shall be listed to two decimal places. The DBE Intended Participation Affidavit Summary must be submitted listing all the DBEs intended to be used and the creditable amounts. Copies of these forms are available from the LPA/Subrecipient.
- (3) The DBE Intended Participation Affidavits Forms and the DBE Intended Participation Affidavit Summary Form must be submitted with the original cost proposal documents. The same documents must be submitted as part of the contract modification documentation submittals reflecting any change in the contract amount associated with the contract modification.
- (4) A proposer must determine DBE credit for the contract in accordance with DBE Special Provision Subsection 17.0 Crediting DBE Participation Toward Meeting Goals. The affidavits will be reviewed by the LPA/Subrecipient.
- (5) Only those DBE firms certified by the Arizona Unified Certification Program (AZUCP) at the time of the Cost Proposal submittal will be considered for DBE credit. It shall be the proposer's responsibility to ascertain the certification status of designated DBEs.
- (6) All DBE commitment amounts must be finalized between the DBE subconsultant and the proposer prior to affidavit submittal. Proposers shall not inflate DBE awards in order to meet contract goals. Reduction of DBE commitments after affidavit submittal and prior to execution of the contract without good cause may be grounds for the proposer to be considered nonresponsive. Scheduling conflicts are not necessarily evidence of good cause as this should have been considered prior to affidavit submittal. Proposers are required to use DBEs identified in both the SOQ and Cost Proposal to meet the contract goal, so the consultant is responsible for ensuring the DBEs listed in the SOQ and submitted with the Cost Proposal are available to meet those requirements at the time of contract execution.
- (7) Cost proposals without affidavits shall be considered incomplete and contract negotiations shall not be finalized nor will the contract be executed until affidavits are submitted and approved.

14.0 Documented Good Faith Effort:

14.01 General:

If the selected proposer has indicated in its cost proposal submittal that it will be unable to meet the DBE goal, that proposer must demonstrate, through detailed and comprehensive documentation, that good faith efforts have been made to solicit, assist, and use DBE firms to meet the DBE goal prior to submission of the SOQ and cost proposal.

Failure to demonstrate good faith efforts to the satisfaction of LPA/Subrecipient with concurrence of BECO will result in denying the award and moving to the next second highest ranked proposer.

The selected proposer who cannot meet the DBE goal at the time the cost proposal is due must submit its documentation of good faith efforts to the LPA/Subrecipient with the cost proposal. Contract negotiations will not be finalized nor will the contract be executed until the required Good Faith Effort forms and required documentation are received and approved.

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

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

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

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

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

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

- (1) Contacting the LPA/Subrecipient and BECO prior to the submission of proposals, either by e-mail, or by telephone, to inform of the firm's difficulty in meeting the DBE goals on a given project, and requesting assistance. The proposer must document its contact with the LPA/Subrecipient and BECO, and indicate the type of contact, the date and time of the contact, the name of the person(s) contacted, and any details related to the communication. The contact must be made in sufficient time before proposal submission to allow the LPA/Subrecipient and BECO to provide effective assistance. The proposer will not be considered to have made good faith efforts if the proposer failed to contact the LPA/Subrecipient and BECO.
- (2) Conducting market research to identify small business consultants and suppliers, and soliciting, through all reasonable and available means, the interest of all certified DBEs who have the capability to perform the work of the contract. This may include attendance at pre-proposal meetings and business

matchmaking meetings and events, advertising and/or providing written notices, posting of "Notices of Sources Sought" and/or "Requests for Proposals" at reasonable locations, including the consultant's website, written notices or emails to all DBEs listed in the Department's directory of transportation firms that specialize in areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project. The proposer should solicit this interest as early in the acquisition process as practicable to allow DBEs to respond to the solicitation and submit a timely offer for the subcontract. The proposer should determine with certainty if DBEs are interested by taking appropriate steps to follow-up initial solicitations.

- (3) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example smaller tasks or quantities) to facilitate DBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
- (4) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for a subcontract.
- (5) Negotiating in good faith with interested DBEs. It is the proposer's responsibility to make a portion of the work available to the DBE subconsultants and suppliers, and to select those portions of work or material needs consistent with the available DBE subconsultants and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided from the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform work.

Pro forma mailings to DBEs requesting proposals are not alone sufficient to constitute good faith negotiation.

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

Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. The consultant must submit copies of each DBE and non-DBE subconsultant quote submitted to the proposer when a non-DBE subconsultant was selected over a DBE for work on the contract. The Department may contact rejected DBEs as part of its investigation. However, nothing in this paragraph shall be construed to require the proposer or prime consultant to accept unreasonable quotes in order to satisfy contract goals.

- (6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The consultant's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the consultant's efforts to meet the project goal. Consultant must submit documentation of past performance and with input from the PM, consultant's qualifications are then reviewed for acceptance and approval.

- (7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or consultant.
- (8) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (9) Effectively using the services of available minority/women community organizations; minority/women consultants' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

In determining whether a proposer has made good faith efforts, the LPA/Subrecipient will review the documented efforts of the consultant and will review the performance of other proposers in meeting the contract goal.

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

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

14.02 Protest for Denied Good Faith Efforts:

If the LPA/Subrecipient, with BECO concurrence, determines that the proposer failed to make adequate good faith efforts, the proposer may protest the determination by submitting an appeal in writing to the ADOT State Engineer. The decision of the ADOT State Engineer is administratively final.

The proposer whose proposal was rejected for failure to meet the goal or make GFE will be given the opportunity to meet in person with the State Engineer, at the proposer's written request included in the protest, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The State Engineer shall promptly consider any appeals and notify the LPA/Subrecipient and all proposers in writing on its findings and decision.

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

15.0 Rejection of Proposal:

If, for any reason, the proposer's GFE is rejected or contract negotiations fail, the LPA/Subrecipient will proceed with negotiating with the second highest ranked firm. The LPA/Subrecipient, will notify the second highest ranked firm, and this firm shall submit its subsequent detailed submission as set forth in the DBE Subsections 13 or 14.

16.0 Payment Reporting:

The consultant shall report on a monthly basis indicating the amounts paid to all subconsultants, of all tiers, working on the project. Reporting shall be in accordance with Prompt Pay and Payment Reporting requirements Section 4.19 of the Uniform Terms and Conditions of the Contract.

17.0 Crediting DBE Participation Toward Meeting Goals:

17.01 General Requirements:

To count toward meeting the goal, the DBE firms must be certified at the time of Cost Proposal submission in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS website. General descriptions of all NAICS codes can be found at <http://www.naics.com/search/>.

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

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subconsultant purchases or leases from the prime consultant or its affiliate will not be credited toward DBE participation.

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

If a DBE cannot complete its work due to failure to obtain or maintain its licensing, the consultant bears the responsibility to notify the LPA/Subrecipient, immediately after the consultant becomes aware of the situation, and request approval to replace the DBE with another DBE. The consultant shall follow the DBE termination/substitution requirements described in Subsection 22.0 of these DBE provisions.

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

A DBE may participate as a prime consultant, subconsultant, or as a vendor of materials or supplies. The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

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

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

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

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

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

17.02 DBE Prime Consultant:

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

17.03 Effect of Loss of DBE Eligibility:

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

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

17.04 Notifying the Consultant of DBE Certification Status:

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

17.05 Police Officers:

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

17.06 Commercially Useful Function:

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

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

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

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

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

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

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

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

18.0 Effect of Contract Changes:

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

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

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

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

19.0 DBE Participation Above the Goal (Race-Neutral Participation):

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

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

20.0 Required Provisions for DBE Subcontracts:

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a participant shall include as a physical attachment, DBE Subconsultant Compliance Assurances available from the LPA/Subrecipient and all of the Uniform Terms and Conditions set forth in other sections of this contract.

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

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

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

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

21.0 Contract Performance:

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

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

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

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

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

22.0 DBE Termination/Substitution:

22.01 General Requirements:

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

22.02 Consultant Notice of Termination/Substitution:

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

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

22.03 Consultant Request of Termination/Substitution:

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

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

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

22.04 Good Cause:

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

1. Fails or refuses to execute a written contract.
2. Fails or refuses to perform the work of its subcontract in a way consistent with normal industry practice standards. However, good cause does not exist if the failure or refusal of the DBE subconsultant to

- perform its work on the subcontract results from the bad faith or discriminatory action of the prime consultant.
3. Fails or refuses to meet the prime consultant's reasonable, nondiscriminatory insurance/bond requirements.
 4. Becomes bankrupt, insolvent, or exhibits credit unworthiness.
 5. Is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal or state law.
 6. Is not a responsible consultant.
 7. Voluntarily withdraws from the project and provides written notice of its withdrawal to the LPA/Subrecipient.
 8. Is ineligible to receive DBE credit for the type of work required
 9. A DBE owner dies or becomes disabled with the result that the firm is unable to complete its work on the contract.
 10. Other documented good cause that the LPA/Subrecipient determines compels the termination or substitution of the DBE subconsultant.

If good cause is determined, the LPA/Subrecipient and will notify the Consultant of the decision and necessary modifications to the contract can be made.

22.05 DBE Replacement Good Faith Effort:

If the LPA/Subrecipient, with BECO concurrence, approves the termination of a DBE, the consultant shall make good faith efforts to find another DBE subconsultant to substitute for the original DBE. The good faith efforts as identified in DBE Subsection 17.0 shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The good faith efforts shall be documented and provided, upon request, to the LPA/Subrecipient within seven calendar days from the date of the request.

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

The termination of a DBE firm shall not relieve the consultant of its obligations under this Special Provision, and the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal. If the LPA/Subrecipient has eliminated items of work subcontracted to a committed DBE, the prime consultant shall still make good faith efforts to replace the DBE with another DBE to the extent necessary to meet the goal. The LPA/Subrecipient will review the quality, thoroughness, and intensity of those efforts.

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

22.06 Sanctions:

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

damages. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

23.0 Certification of Final DBE Payments:

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

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

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

24.0 Sanctions for Not Meeting Contract DBE Goal:

If the LPA/Subrecipient determines, with BECO concurrence, that the consultant has not met the DBE goal at the end of the contract, the LPA/Subrecipient will, at its discretion, may assess liquidated damages up to two times the amount of the unattained portion of the original DBE goal, based on the circumstances of the noncompliance. Not meeting the DBE goal will also be reflected in the consultant evaluation.

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

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

25.0 False, Fraudulent, or Dishonest Conduct:

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

End of Exhibit "D" Disadvantaged Business Enterprises