

**CONTRACT AWARD AND ADMINISTRATION GUIDELINES FOR  
FEDERAL-AID PROJECTS FUNDED BY FHWA**

**Pima County Procurement**

**Design & Construction Division**



***Effective: October 2016***

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PIMA COUNTY PROCUREMENT  
CONTRACT ADMINISTRATION GUIDELINES FOR FEDERAL-AID PROJECTS FUNDED BY FHWA

**SECTION I – GENERAL INFORMATION**

**1.1 Key Acronyms**

ADOT	Arizona Department of Transportation
ADOT LPA	Local Public Agency Section (ADOT)
AGENCY	Certification Acceptance Agency (City, County or Town)
A/E	Architectural and Engineering
ARS	Arizona Revised Statutes
AZ UTRACS	Arizona Unified Transportation Registration and Certification System
A&A	ADOT Audit & Analysis
BECO	Business Engagement and Compliance Office (ADOT)
CAP	Certification Acceptance Program
CCO	Pima County Commodity Contracts Officer
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprises
ECS	Engineering Consultants Section (ADOT)
FHWA	Federal Highway Administration
LPA	Local Public Agency [City, County or Town] (Agency(ies))
PCDOT	Pima County Department of Transportation
PM	Pima County Project Manager
QBS	Qualifications Based Selection
RFP	Request for Proposal
SBC	Small Business Concerns
SFQ	Solicitation for Qualifications
SOQ	Statement of Qualifications – [ <i>response to an SFQ</i> ]
USC	United States Code
USDOT	United States Department of Transportation

**1.2 Background**

This document was developed to provide consistent procedures for Pima County Procurement regarding the advertisement, selection, negotiation, execution and administration of architectural and engineering (A/E) contracts utilizing funding from FHWA.

Some of the requirements described herein may vary from contract to contract depending upon its size, complexity and type.

**Pima County and its Consultants shall adhere to all applicable ADOT LPA guidelines, State Statutes, Federal laws/regulations and contract standard terms and conditions pertaining to engineering consultant service contracts.**

**1.3 Application**

**These procedures apply to contracts for (A/E) consultant services for the full spectrum of engineering and other consultative disciplines required to fully design and construct**

transportation facilities or highway facilities and program to control and oversee the study, location, design and construction administration of the facilities that are Federal-Aid Highway Program funded which are solicited and administered by Pima County in accordance with ADOT's Local Public Agency Section (ADOT LPA) approved procedures.

In addition to engineering, disciplines services may include but are not limited to architects, landscape architects, geologists, geotechnical investigators, and environmentalists and other related services.

All projects administered under these guidelines shall be designed in accordance with established engineering and design principles, including all applicable Federal and State statutes, regulations, guidelines and procedures applicable to environmental protection.

*When FHWA Federal funds are used to fund project design, Pima County shall adhere to all applicable Federal and State statutes and regulations during the selection, negotiation and management of the design contract. When State and Local procurement laws, regulations, policies and procedures are in conflict with applicable Federal laws and regulations, the contracting agency shall comply with Federal Requirements to be eligible for Federal-aid reimbursement of the associated costs of services incurred following FHWA authorization per 23 CFR 172.5 (a)(2) and as specified in 23 CFR 630.106. 23 CFR 172.5 (a)(2) and 23 CFR 630.106 only refer to federal authorization. This is additional federal procurement requirement as required by 23 CFR 172.7(b)(1)(ii).*

Resource Design:

Public Law 92-582	Brooks Act
23 USC 112 (b) (2)	Letting of Contracts for Engineering and Design Services – Negotiations
Public Law 112-141	MAP 21 – Moving Ahead for Progress in the 21 <sup>st</sup> Century Act
23 CFR Part 172	Administration of Engineering and Design Related Service Contracts
48 CFR Chapter 12	Federal Acquisition Regulations (Department of Transportation)
2 CFR 200	Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards
49 CFR Part 26	Disadvantage Business Enterprises
A.R.S. 23-214(A)	Verification of Employment Eligibility; e-verify program

#### **1.4 Program Oversight**

*Pima County's program will be reviewed for Federal compliance every three (3) years. As part of the Certification Review, Pima County will provide the following:*

- *LPA Guidelines*
- *Agency Consultant Prequalification Process (if applicable)*
- *On- Call Task Order Reporting- Bi-Annually (if applicable)*
- *Internal/External Audit Reports and Report Findings*
- *Final/Incurred Cost Audit Reports and Findings of Federal Funded Consultant Contracts*
- *DBE Compliance on a Quarterly Basis*
- *Sampling of Agency Contracts*

***ADOT shall provide a Certification Review Checklist to Pima County with any and all commendations, recommendations and corrective actions. ADOT LPA Section will then issue a letter to re-certify Pima County's Contract Administration Program..***

### **1.5 Qualifications-Based Selection (QBS) - Brooks Act**

QBS is a competitive process whereby consulting firms are evaluated and selected based on their qualifications submitted (SOQ) in response to a solicitation (SFQ). Under the QBS process, the cost of the work (price) is not considered when selecting the most qualified firm for the required professional engineering services.

For federally funded projects, A/E consultant contracts must be awarded using QBS process and an approved prequalification process (if applicable), as required by the Brooks Act.

Selection of consultant shall be based solely on demonstrated competence and qualifications for the type of professional services required. Pima County and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process.

**The SFQ shall indicate whether interviews will be held, the overall weighting of the interview, and how the written score and interview score will be compiled to arrive at the final score.**

In determining the firms to participate in any interviews and in determining firms to be on the final list and their order on the final list, the selection committee shall use and shall consider only the criteria and weighting of criteria specified by Pima County as published in the SFQ **and any interview criteria and weighting as provided to all interviewing firms prior to the interview.** No other factors or criteria may be used in the evaluation, determinations and other actions.

The CCO shall ensure that negotiations with the selected consultant to determine a fair and reasonable consultant fee will begin after the most qualified firm has been selected. The cost for services, along with the detailed scope of work, schedule, and budget are negotiated following the selection of the most qualified firm and before the contract is signed by both parties. The CCO negotiates with the second or third most qualified firm only if failed negotiations occur with the most qualified firm and if such negotiations with the most qualified firm are formerly terminated.

If a smaller number of firms respond to the solicitation for qualifications or if one or more firms drop out of the procurement so that there is a smaller number of firms participating in the procurement, Pima County may elect to proceed with the procurement with the participating firms if there are at least two participating responsive and responsible firms. Alternatively, Pima County may elect to terminate the procurement. In either instance, county will notify and seek approval from ADOT prior to proceeding with the intended action.

If only one responsive and responsible firm responds to the solicitation for qualifications or, if one or more firms drop out of the procurement so that only one responsive and responsible firm remains in the procurement, Pima County may elect to proceed with the procurement with only one firm if Pima County determines in writing that the fee negotiated is fair and reasonable and that either other prospective firms had reasonable opportunity to respond or there is not adequate time for a resolicitation. Such determination by Pima County must be approved by FHWA and ADOT before proceeding with the procurement.

If a firm on the final list withdraws or is removed from the procurement and the selection committee determines that it is in the best interest of Pima County, the selection committee may replace that firm on the final list with another firm that submitted qualifications in the procurement and that is selected by the selection committee as the next most qualified.

Pima County may cancel a solicitation for qualifications, reject in whole or in part any or all submittals, or determine not to enter into a contract as specified in the solicitation if Pima County determines in its absolute and sole discretion that the action is in the best interest of Pima County. Pima County shall notify FHWA and ADOT in this event. The reasons for cancellation, rejection or determination not to enter into a contract will be maintained in the contract file.

#### **1.6 Federal-Aid Funds Authorization**

The CCO shall verify with Pima County Transportation Department Project Manager that work on projects funded with Federal-Aid Highway Program funds **are authorized by the Federal Highway Administration (FHWA) prior to execution of a contract or contract amendment.**

Prior to advertisement of the SFQ, the CCO shall ensure: (1) that the authorization is submitted by the Project Manager on the requisition or by email; and (2) a copy of the FHWA funding authorization is printed and maintained in the contract file. FHWA authorization must be in place prior to the execution of the contract and contract modification/task order.

**No Notice to Proceed or Advanced Notice to Proceed shall be given until FHWA funding authorization is received. Consultant's and Pima County's costs are not reimbursable if there is no written FHWA authorization or if costs are incurred prior to FHWA authorization date.**

#### **1.7 Contract Compensation Types**

The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereto. The method of payment shall be Cost Plus Fixed Fee.

The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used.

The contract shall specify a maximum amount payable which shall not be exceeded unless adjusted by a contract modification.

The modified Cost Plus Fixed Fee (CPFF) applied here is a compensation method that provides compensation to the 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. Consultant's total CPFF shall be allocated among the major tasks contemplated by the contract in such manner that each major deliverable will have associated with it a not-to-exceed cost, plus a fixed fee amount, incorporated in the contract. Consultant shall invoice monthly, unless otherwise agreed, for the actual costs incurred plus a pro-rata portion of one-half of the fee amount for each task. Actual costs shall be calculated by consultant 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 the consultant's invoice for billing purposes. Calculations and supporting data

shall be made available to Pima 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), the balance of the fee allocated to that task may be paid to consultant.

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

All invoices shall 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 Work for which those costs were incurred. The time accounting information should be sufficient to show the worker and hours worked by day for the period covered by the invoice. Subconsultant charges shall be supported by appropriate documentation with each separate invoice submitted.

Consultant shall 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.

This compensation type is subject to final audit prior to contract close.

### **1.8 Federal-Aid Funded Contracts**

Pursuant to 23 CFR 172.7, additional considerations for Federal-aid Funded Contracts include:

- a) Contracts – CCO shall ensure that contracts and contract settlements involving design services for projects that have not been delegated to the State or Pima County under 23 U.S.C. 106(c), that do not fall under the small purchase procedures in § 172.5(a)(2), shall be subject to the prior approval by FHWA, unless an alternate approval procedure has been approved by FHWA.
- b) Major Projects - CCO shall ensure that any contract, revision of a contract or settlement of a contract for design services for a project that is expected to fall under 23 U.S.C. 106(h) shall be submitted to the FHWA for approval.
- c) Consultant Services in Management Roles - CCO shall ensure that when Federal-aid highway funds participate in the contract, Pima County shall receive approval from the FHWA before hiring a consultant to act in a management role.

### **1.9 Non-Competitive Negotiations**

In some instances, because of the unique characteristics of the project or in the best interest of Pima County, CCO may exercise the option of using "Non-Competitive Negotiation" procurement to waive the advertisement of a project.

Prior to proceeding with this method, CCO shall obtain FHWA and ADOT LPA Section concurrence.

Pursuant to 23 CFR Title 172.7 (a) (3) (iii)-Methods of Procurement, circumstances under which a contract may be awarded by non-competitive negotiations are limited to the following:

- (i) The service is available only from a single source;

- (ii) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or
- (iii) After solicitation of a number of sources, competition is determined to be inadequate.

CCO shall ensure written justification for using “Non-Competitive Negotiation” including documentation of the consultant selection process, and of how fair and reasonable costs were negotiated for the project shall be maintained in the contract file.

**Pima County shall determine the allowability of costs in accordance with the Federal cost principles.**

### **1.10 Emergency Procurement**

Pima County does not anticipate using FHWA funding for emergency procurements. If Pima County wishes to pursue emergency procurements funded by FHWA, the procedures will be submitted to ADOT and FHWA for review and approval before proceeding.

### **1.11 Impracticable to Advertise (Low Value) Procurements**

Projects under the \$150,000 simplified acquisition threshold as established by Federal guidelines 2 CFR 200.88 will be considered “low value procurements” and will not be procured at this time using FHWA funds.

Pima County will submit the Low Value procurement procedures to ADOT for review and approval before proceeding, if at a later date Pima County decides to use this procurement method.

### **1.12 On-Call Procurements - Pima County intends to seek approval from ADOT of On-Call Procurements at a later date separately from this submission.**

At a later date, Pima County will submit to ADOT for approval their on-call procedures separately from this submission.

Pima County will not use these procedures or federal funds for on-call contract types.

### **1.13 Standard of Conduct and Conflict of Interest**

CCO must ensure contract contains standard cancellation language for conflict of interest which references A.R.S. § 38-511.

Pima County staff, including selection panel members, and consultant project staff are required to adhere to 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 Policies and Procedures which establish minimum standards for the conduct of public officers, employees and former employees who are, or may become, involved with a contract or decision, in their official capacity, which might affect their personal pecuniary interest or those of their relatives, i.e., spouse, children, grandchildren, parent, grandparent, brother, sister and their spouses, or the parent, brother or sister or child of one’s spouse, A.R.S. § 38-502 (9). Furthermore, Pima County’s Conflict of Interest Policy relating to the acceptance of gifts or gratuities is fully applicable to the contract process.

CCO must ensure all members of the evaluation panel attend evaluation panel training and sign a no conflict of interest statement that includes ethics and gift language.

Pima County shall disclose promptly and in writing any potential conflict to ADOT and FHWA as outlined in 23 CFR 172, 2 CFR 200.112 and 23 CFR 1.33.

#### **1.14 Non-Collusion**

Consultant and subconsultants are prohibited from engaging in collusion, which is interaction with other consultants/proposers/subconsultants or potential consultants/proposers/subconsultants or other entities that would limit the scope and/or extent of competition and/or otherwise discourage or suppress competition among consultants for Pima County engineering consultant contracts. In every Statement of Qualification (SOQ) proposal or other request to contract with Pima County, the respondent certifies that it has not engaged in collusion with respect to the contract under consideration.

CCO shall include the following non-collusion certification statement in all SFQ's:

**“NON-COLLUSION:** Each respondent, by submitting an SOQ, is certifying that the respondent has not and will not, either directly or indirectly, enter into any agreement, participate in any collusion, or otherwise take any action, in restraint of free and open competition in connection with this solicitation or with respect to any resulting contract under consideration as a result of this solicitation.”

#### **1.15 Debarment and Suspension**

CCO shall include the following debarment and suspension certification in all solicitations for qualifications:

**“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 so 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>.”

CCO shall include in the solicitation and contract document the Uniform Terms and Conditions of which section 4.2 addresses Federal Debarment and Suspension.

The CCO shall verify the Debarment and Suspension status of each consultant submitting an SOQ and of any subconsultant listed in the SOQ in the System for Award Management (SAM) at <https://www.sam.gov/portal/public/SAM>.

The CCO shall maintain a record of printout from the SAM system in the procurement file.

**Prior to entering into contract, Pima County shall verify the Debarment and Suspension status via 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. The causes for debarment or suspension include, but are not limited to, the following:

- Conviction of any person or any subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- Conviction of any person or any subsidiary or affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a Pima County contractor;
- Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes;
- Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, including, but not limited to, knowingly failing without good cause to perform in accordance with the specifications or within the time limits provided in one or more contracts, failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment, any other cause deemed to affect responsibility as a Pima County contractor, including suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity for any cause, or indictment for a criminal offense may be considered as evidence for purposes of debarment/suspension.

#### **1.16 Examination of Records (Freedom of Information Act (ARS § 28-7707))**

Requests for copies or viewing of contract documents other than the consultants' own contract files shall be considered in accordance with applicable Public Records request statutes and Pima County's policy.

All contracts are maintained online in Pima County's eContract System. Contracts can be viewed at [www.pima.gov/public-eContracts/](http://www.pima.gov/public-eContracts/)

Pima County Procurement responds to public records requests as stated below:

##### **Definitions:**

**Officer:** Any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.

##### **Public body: Pima County:**

**Public Records:** All books, papers, maps, photos and documentary materials produced or kept by a Public Official (Officer) in pursuance of a duty or to document the activities of a public body. Throughout this document the words page, record, and document are used interchangeably.

**Commercial Purpose:** The use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or

indirect use of the public record. Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.

**General:**

Public records shall be open to inspection by any person at all times during office hours. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's web site to the requesting person.

Pima County is not required to modify the present media, physical condition or format of the Public record.

To conserve public funds and resources, Public Record requests shall be specific and detailed regarding which particular record(s) or documents(s) are being requested. Discussions are appropriate and necessary to clarify and detail general requests.

**Solicitations:**

All solicitation documents issued by the Procurement Department shall provide the following language as part of the standard terms and conditions.

**PUBLIC INFORMATION:**

*... in the case of construction or Architectural and Engineering services procured..., all information submitted by respondent in any way related to this solicitation and resulting 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.*

*Each page submitted in response to this solicitation that respondent believes constitutes proprietary, trade secret or otherwise confidential information must be appropriately and prominently marked as Confidential prior to submittal to County and shall be accompanied by an index document specifically identifying and describing the general contents of each page so marked. The index shall be a Public Record and shall 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 shall release records marked CONFIDENTIAL ten (10) business days after the date of notice to the respondent of the request for release, unless respondent has, within the ten 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 shall not be counted in the time calculation. Respondent shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.*

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

**CONTROL OF RECORDS MARKED CONFIDENTIAL**

To control and sequester all documents marked *confidential* the CCO conducting the solicitation to which the submittal was made shall create, or have created, an envelope or package clearly marked as

containing *Confidential Documents* and insert the documents and attach to the outside of the envelope the respondents' index document generally describing the alleged confidential information.

#### **REQUESTS FOR REVIEW OF PUBLIC RECORDS**

Requests to review Procurement Department Public Records shall be promptly scheduled and accommodated considering prior commitments of the associated Contracts Officer and Procurement Department staff. Only those Public Records specifically requested shall be provided for review.

Confidential index documents are considered Public Records. Documents marked confidential shall not be considered public records. Requests for access to records marked confidential shall specifically identify each such document requested and shall be processed by the Contracts officer as a request for confidential information under the above Public Information standard term and condition.

Procurement staff may be present during the review as deemed appropriate by the Contracts Officer administering the review to assure that all documents remain unaltered and in the custody of the procurement department.

There shall be no cost assessed or payment required for reviews.

#### **REQUESTS FOR RECORDS MARKED CONFIDENTIAL**

Upon receipt of a Public Records request for pages alleged to be confidential as defined above, the Contracts Officer assigned to administer the related contract shall issue a written and verifiable notice letter of the request as promptly as is practical to the Owner of the confidential records. The letter shall be reviewed, approved and initialed by the County Attorney and signed by the Procurement Director prior to issue. If the Director is not available and a delay would cause negative circumstances for Pima County then a person to whom Procurement Director Authority has been delegated may sign as acting Procurement Director; the Contracts Officer shall provide a copy of that letter to the Procurement Director.

Upon expiration of the notice period defined by notice letter the Contracts Officer shall consult with the Procurement County Attorney and either release the requested records or issue a written response to the requestor declining the request citing reason given by the County Attorney. The Contracts officer shall not release confidential records without written approval to do so from the County Attorney.

#### **REQUESTS FOR COPIES OF RECORDS**

Requests for copies of Public Records shall be made pursuant to Administrative Procedure 4-4 and require use of the forms provided by the Administrative Procedure defining the request to be for Commercial or Non-Commercial purpose.

If requested, the Procurement Department shall furnish a copy of the respondent's index document identifying documents they marked confidential.

Requests to copy Documents available via County websites shall be declined.

#### **PAYMENT OF COSTS**

The Procurement Department shall define and inform requestors of all costs required to comply with legitimate requests and collect payment prior to performing the work required to satisfy the request.

Requestors shall pay for all defined costs by cash, check drawn by a legal Company active account, certified check or money order. Personal checks or credit cards will not be accepted.

Public Records used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits that is to be presented to the United States or a bureau or department thereof shall be furnished without charge.

### **Requests for Commercial Purpose/Use**

When a person requests copies, printouts or photographs of public records for a commercial purpose, the person shall provide a statement setting forth the commercial purpose for which the copies, printouts or photographs will be used. Administrative procedure 4-4 includes the form to be used for this purpose. Upon being furnished the statement the custodian of such records may furnish reproductions, the charge for which shall include the following:

A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs.

A reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction.

The value of the reproduction on the commercial market as best determined by the public body.

## **1.17 Protest and Dispute Resolution**

Pima County Procurement addresses protest and dispute requests by following the procedure below:

- A.** Applicability. An interested party may file a protest regarding any aspect of a solicitation, evaluation, or recommendation for award.
- B.** Pre-bidding Protests. Protests regarding solicitation that are apparent before the time for receipt of proposals shall be filed before the time for receipt of proposals.
- C.** Notice of Recommendation for Award. The procurement director shall post notification of recommendation for awards for all formally advertised solicitations. Notification shall be pursuant to written procurement procedures.
- D.** Filing a Protest. A bidder or offeror may file a protest in writing with the procurement director. Protests filed more than five days after the protester knew or should have known of the recommendation for award, or after contract award shall be considered untimely. The protest shall include the following information:
  - 1. The name, address and telephone number of the protester;
  - 2. The signature of the protester;
  - 3. Identification of the solicitation;
  - 4. A statement of the factual grounds of the protest including copies of relevant documents; and
  - 5. A description of the relief requested.
- E.** Dismissal Before Hearing. Within five days of receipt of the protest, the procurement director shall dismiss a protest, upon a written determination, if:
  - 1. The protest does not state a valid basis for protest; or
  - 2. The protest is untimely.
- F.** Protest Hearing.
  - 1. If the County Administrator or the Procurement Director determines that a hearing on a protest is appropriate, the Procurement Director shall set a hearing within ten days of receipt of the protest and notify the protestor of the time and place set for the hearing.

2. Notice of the hearing shall also be given to any other persons involved in the solicitation whose interests may be affected by the ruling. Any person whose interest is potentially affected may be permitted to participate in such hearing.
  3. If a protester fails to appear and participate in the hearing, the official conducting the hearing may summarily rule upon the protest based upon information then available.
- G. Hearings; Stay of Recommendation.** Hearings conducted in accordance with this section shall be conducted by the Procurement Director or designee or a hearing officer designated by the County Administrator, and shall be as informal or formal as may be reasonable and appropriate under the circumstances. Upon receiving notice of hearing, the County Administrator shall stay the contract award pending the outcome of the hearing, unless the County Administrator makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the County.
- H. Protest Decision.** The Procurement Director shall render a written decision on the protest. If there is a hearing on the protest and a hearing officer issues a recommended decision, the Procurement Director's decision may adopt or reject that recommendation. The Procurement Director shall send the decision to the protester and any other interested parties within five days after the protest is filed or the hearing is complete, whichever is applicable. The decision shall state that the protester and any other interested party who participated in the hearing may appeal the decision to the board by filing an appeal with the clerk of the board within five days of the date of the written decision.
- I. Remedies.** If the protest is sustained in whole or part, an appropriate remedy shall be implemented.
1. In determining an appropriate remedy, consideration shall be given to all the circumstances surrounding the procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, costs to the County, the urgency of the procurement and the impact of the relief on the department's mission.
  2. An appropriate remedy may include the following:
    - a. Withdraw staff recommendation and reissue the solicitation;
    - b. Withdraw staff recommendation and issue a new solicitation;
    - c. Withdraw staff recommendation and recommend award of contract consistent with this title; or
    - d. Such other relief as is determined appropriate.
- J. Appeal to the board of supervisors.**
1. A protester or any other interested party who participated in the protest hearing may file a written appeal of the Procurement Director's decision specifying the reason for the appeal. The appeal shall be filed with the clerk of the board within five days of the date of the Procurement Director's decision.
  2. The board shall consider the protest at a regularly scheduled meeting within thirty days of the Procurement Director's decision. The board may, with or without a hearing, either accept the decision of the Procurement Director, or determine an appropriate remedy.

### **1.18 Disadvantaged Business Enterprise (DBE) Program**

#### **Pima County adopts the ADOT DBE Program Plan.**

For more details on the DBE program and process requirements reference the ADOT Business Engagement and Compliance Office (BECO) guidelines for DBEs.

ADOT encourages the formation and growth of new and existing DBEs, as defined in 49 CFR Part 26, by providing an opportunity to compete for architectural and engineering services when Federal funds are involved.

ADOT actively assists DBE firms in their efforts to compete for architectural and engineering (A/E) services through the following office:

Arizona Department of Transportation  
Business Engagement and Compliance Office (BECO)  
1801 W. Jefferson St., Mail Drop 154A  
Phoenix, Arizona 85007  
Phone (602) 712-7761

Consultants are encouraged to utilize DBEs for both race conscious (with specific DBE goals) and race neutral contracts and to enlist the aid of Pima County and ADOT BECO to obtain assistance in partnering with DBE firms in responding to SFQs. The SFQ includes the Uniform Terms and Conditions Federal Contract Requirements (UTC) and Professional Services Disadvantaged Business Enterprise Provisions that sets forth the DBE requirements and DBE goals, if any, for the contract.

Consultants must also maximize DBE participation in ADOT and Agency Federal-Aid Highway funded contracts, make good faith efforts to meet any DBE goals stated in contract solicitations and must adhere to commitments made to utilize DBEs as indicated in the firm's SOQ proposal. Pima County will monitor the use of DBEs on contracts to ensure that they are performing commercially useful functions as outlined in the SOQ proposal and the contract, as well as subcontract agreements between Prime Consultants and DBE firms and ensure that required reporting requirements are met.

#### **1.19 AZ UTRACS Online Vendor Registration**

Pursuant to 49 CFR 26.11(c)(2), US DOT requires ADOT to collect demographic information on all firms who seek to work on Pima County federally-assisted contracts, including prime Consultants, Subconsultants, Disadvantage Business Enterprises (DBEs), and Small Business Concern (SBC) firms. The primary method of collecting this data is through the Arizona Unified Transportation Registration Certification System (AZ UTRACS), a centralized database of companies doing business in ADOT on federal-funded projects.

All prime Consultants submitting a Statement of Qualifications (SOQ) to Pima County shall be registered as a vendor in AZ UTRACS at <http://adot.dbesystem.com>. Prime Consultants shall update any changes to its vendor record in AZ UTRACS.

Noncompliance or failure of prime Consultants to include their AZ UTRACS vendor registration number in the SOQ Proposer's Solicitation List, or maintain a current (non-expired) AZ UTRACS vendor registration number, shall result in the SOQ rejection.

The CCO shall ensure the inclusion of the following clauses in all solicitation for qualifications:

**"ARIZONA UNIFIED TRANSPORTATION REGISTRATION CERTIFICATION SYSTEM (AZ UTRACS) ONLINE VENDOR REGISTRATION:** Pursuant to 49 CFR 26.11 (c) (2), the US DOT 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, Disadvantage Business Enterprises (DBEs), and Small Business Concern firms. ADOT's primary method of collecting this data is through the Arizona Unified Transportation Registration Certification System (AZ UTRACS), a centralized database of companies doing business in ADOT on federal-funded projects.

## **1.20 Small Business Concerns**

In partnership with the Cities of Phoenix and Tucson, ADOT has implemented a Small Business Concern (SBC) component to its DBE program. The initiative is required by federal regulations 49 CFR 26.39 governing the state's DBE program.

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, registered to do business in Arizona and meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

***For more details on the SBC program and process requirements, reference the ADOT Business Engagement and Compliance Office (BECO) guidelines for SBCs.***

In Accordance with 49 CFR 26.11, Pima County facilitates and encourages participation by all Small Business Concerns (SBCs) in Pima County federal-aid projects. Pima County encourages Consultants to take reasonable steps to eliminate obstacles to SBC's participation and to utilize SBCs in performing contracts. SBCs are registered in AZ UTRACS at <http://adot.dbesystem.com>. Small businesses within Pima County interested in providing goods and services on Pima County federal-aid projects must contact City of Tucson to register as an SBC. Respondents to Pima County Solicitations for Qualifications (SFQ) must identify subconsultants on the online SOQ Bidders/Proposer's List with their submittal that is reviewed by ADOT BECO for compliance at <https://utracs.azdot.gov/BiddersListInfo/>.

## **1.21 Anti-Lobbying/Disclosure**

Federal Acquisition Regulation (FAR) prohibits the expenditure of Federal-Aid Highway Program funds to pay any person for influencing or attempting to influence a federal, state, or local agency or Congress in connection with the award of any Federal-Aid Highway Program funded contract, grant, loan or cooperative agreement. The Consultant is required to sign a statement certifying that to the best of its knowledge and belief that no Federal-Aid Highway Program funds have been paid or will be paid, by or on behalf of its firm for the purpose of lobbying.

If the Consultant should report lobbying activities, the applicable Agency process must be followed. Consultant is required to submit Anti-Lobbying/Disclosure Forms. These forms are supplied to the Consultant by the Agency Procurement Office and must be completed and received by the Agency prior to execution of the contract. The above regulations also apply to Subconsultants and their subconsultants (lower tier) whose contracts exceed \$100,000.00.

CCO ensures that solicitation includes Consultant's certification of the following statement:

"Consultant certifies that to the best of their knowledge and belief that no Federal-Aid Highway Program funds have been paid or will be paid, by or on behalf of its firm for the purpose of lobbying: influencing or attempting to influence a federal, state, or local agency or Congress in connection with the award of any Federal-Aid Highway Program funded contract, grant, loan or cooperative agreement."

## SECTION II – ADVERTISEMENT THROUGH SELECTION NOTIFICATION

### 2.1 Prequalification of Consultants

Pima County will require each consultant submitting an SOQ be pre-qualified with ADOT prior to submitting an SOQ.

### 2.2 DBE Goal Setting

In adherence to 49 CFR Part 26, and 21, all Federal-aid funded projects acquired through FHWA funds must have their projects assessed for a DBE goal prior to advertising a contract by ADOT BECO to ensure DBE participation is achieved through race-neutral and race-conscious means. All federal aid projects are assessed for DBE opportunity. Where DBE availability exists, race-conscious goals will be set.

Pima County's DBE Liaison is notified by the CCO or Project Manager that they have received a Federal project that will need to be assessed for DBE utilization. The Project Manager provides:

- Federal Project Number
- ADOT TRACS Number
- Project/Contract Number
- Project Title/Description
- Total \$ Project Estimate
- Funding Source/Funding %/Funding Type/Region
- Submission Date/Bid Advertisement Date/Estimated Bid Date
- Project Manager/Department/Email/Phone/Fax
- Engineers Estimate
- Scope of Work

Pima County's DBE Liaison submits the set request by completing the Professional Services Goal Worksheet through ADOT's DBE Goal Setting Application utilizing the County Engineer's Estimate to enter aggregate value of work categories. ADOT BECO provides a confirmation of submission within 1—2 days and the project goal assessment within 10 business days of receipt of the scope and goal assessment worksheet.

The FHWA Professional Service required process has been completed and the project ready to be solicited/advertised. Note: FHWA TRACS No is included in Pima County's request for proposals.

The DBE Goal Setting Worksheet and applicable BECO determination is maintained in the project file and available for review and inspection as required by FHWA or ADOT.

### 2.3 Pre-Advertisement Requirements

Prior to the advertisement of a project, Pima County will obtain the following approvals from ADOT:

- Funding Authorization (Federal Authorization e-mail will suffice or AZPR2X form)
- Method of Procurement (Standard, Sole Source, Emergency, etc.)
- Number of Awards (If on-call or multiple selection)

- Advertisement and Submittal Schedule of Events
- DBE Goal Assessment
- SFQ Package with a Sample Contract, assigned DBE Goal and Final Project Scope of Work

## 2.4 Standard Content Requirements for SFQ

Pima County will ensure the SFQ document contains or addresses the following information:

- Contract Number, Name of Project and applicable Project Number (TRACS No.)
- Public Advertisement Notice (Dates advertised and SFQ Submittal Deadline)
- Instructions on where to obtain a copy of the SFQ
- SOQ Submittal Delivery Location (Submitted electronically or hard copy)
- Proposal preparation instructions/format (No. of pages, copies, format, etc.)
- No Cost/Price Information or Work-Hour Estimates Notice
- Right to Reject any and all Submittals Notice
- Required proper Arizona licenses, Registrations (BTR, AZ UTRACS, etc.)
- Reserved
- ADOT Prequalification Requirement
- Online SOQ Bidders/Proposer's List Requirement
- Staff Contact Restriction Notice
- Questions Deadline
- Pre-Submittal or Oral Interview Information (if applicable)
- Number of Awards (if applicable, on-call or multiple selection)
- Professional Liability Insurance Requirements (if applicable)
- Generally Accepted Accounting Principles (GAAP) Notice
- All SOQ submittals become property of the Agency
- Review of Selected SOQ Proposals after Award
- Proposal Content and Format Instructions
- Evaluation Criteria and Possible Award Points
- SOQ Certification Requirements
- DBE Goal and Compliance Information
- Final Project Scope of Work
- Sample Contract with applicable Compensation Language, DBE Goal Assessed Percentage (if applicable) and all Federal Uniform Terms and Conditions
- Contract Procurement and Project Schedule
- Most recent and current Non-Discrimination/Title VI Assurances

The Solicitation for Qualifications shall state:

- Respondents must be prequalified at the time of submittal with ADOT ECS and provide a statement verifying prequalification. For information concerning prequalification, visit: <https://www.azdot.gov/business/engineering-consultants/consultant-prequalification>.
- One firm may or will be awarded a contract; describe the services to be performed under the contract.
- There will be a single final list of at least three and not more than five firms for interviews.

- The selection criteria and relative weight of the selection criteria to be used by the selection committee. All selection criteria under this subsection shall be factors that demonstrate competence and qualifications for the type of professional services included in the procurement.
- The SFQ shall indicate whether interviews will be held, the overall weighting of the interview, and how the written score and interview score will be compiled to arrive at the final score.
- In determining the firms to participate in any interviews and in determining firms to be on the final list and their order on the final list, the selection committee shall use and shall consider only the criteria and weighting of criteria specified by Pima County as published in the SFQ and any interview criteria and weighting as provided to all interviewing firms prior to the interview. No other factors or criteria may be used in the evaluation, determinations and other actions.
- The solicitation for qualifications shall also state that Pima County will select the firms on the final list and their order on the final list through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the solicitation for qualifications.
- The location of Pima County’s protest policy and procedures.

**2.5 SFQ Format and Evaluation Criteria**

Pima County’s proposal format and evaluation criteria for Federal funded contracts shall be followed in accordance with 23 CFR 172.7 (a)(1)(iii)(D). A standard SOQ proposal format is as follows:

- A. Response shall include a Consultant Information Page: Statement of Interest / SOQ Proposal Certification containing respondent’s response to required information and certifying agreement with Federal, State and County guidelines contained in the SFQ.
- B. Evaluation criteria and weight factors:
  - 1. Qualifications and Experience.
    - a. Project Team Capabilities
    - b. Specific project approach
  - 2. Past Performance Evaluations
- C. Online SOQ Bidders/Proposer’s List verification
- D. DBE requirements
- E. Resumes and Other Requested Information

**2.6 Advertisement Process**

Pima County will publish two (2) official notices of the solicitation for qualifications. The first notice shall be published by advertising in a daily newspaper of general circulation in Pima County for four consecutive publications that are at least six but no more than ten calendar days apart. The second notice shall be published by advertising in a newspaper of general circulation with an accumulated general circulation of not less than 50,000 subscribers for two publications with fourteen calendar days from the first to second publication. Affidavits of publication from these two newspapers will be kept in the procurement file. Furthermore, the SFQ will be made publically available on Pima County’s website from date of publish to the due date which shall be at least 23 calendar days.

Advertisements shall meet the federal requirement specified in 23 CFR 172.7(a)((1)(i) whereas all qualified in-State and out-of-State consultants are given a fair opportunity for award of the contract.

## **2.7 SFQ Availability**

Upon the first day the SFQ is advertised through SOQ Deadline, the SFQ Package shall be made available for download from Pima County's website.

## **2.8 Addendum to SFQ Package**

When necessary, Pima County may prepare addendums to the original solicitation. Any clarifications or interpretations that materially affect or change the scope or intent of the SFQ will be issued via addenda and posted by the County on the County's web site. The CCO will make an effort to notify respondents of the posting of addenda by email or facsimile and shall document this effort by printing the notification and transmission confirmation in the procurement file.

**Proposers shall include acknowledgment of receipt of each addendum their SOQ proposal submittal because a failure to do so will result in the rejection of the SOQ.**

## **2.9 Contact with Pima County Staff during Solicitation Period**

During the solicitation period, Consultants are not permitted to communicate with any Pima County staff, including management, project staff and/or selection panel members about an advertised project. Such communication shall result in rejection of the proposal/submittal and replacement of the selection panel member (if applicable). The only contact allowed is through the Key Point of contact at Pima County or the Pima County sponsored open public meeting identified in the SFQ.

Consultant contact restriction shall begin on the first day of advertisement and shall remain in effect until the selection/award announcement. All questions regarding the SFQ shall be submitted in writing to the point of contact identified in the SFQ.

## **2.10 Pre-Submittal Meeting**

Pre-submittal meetings will be held for every procurement for consultant services funded by FHWA. The pre-submittal date and time will be published in the advertisement, the SFQ, and electronically on the County's website. The sign in sheet from the pre-submittal meeting will be retained in the procurement file and will be published electronically on the County's website.

## **2.11 Pre-SOQ Submittal/Selection Panel Requirements**

Prior to SOQ submittal, Pima County will have the following documents in place:

- a. Evaluation Panel Tentative Schedule of Events
- b. Approved List of Qualified Selection Panel Members
- c. Panel Member Confidentiality and Participation Forms
- d. Selection Panel Instruction Package
- e. Evaluation Criteria Score Sheet and Panel Comment Forms

Pima County shall initiate an appropriately qualified selection committee for each solicitation for qualifications. Pima County shall ensure that the selection committee members are competent to serve on the selection committee. Each selection committee must include one employee of the Pima County. Pima County shall determine the number and qualifications of the selection committee members. Outside contractors, architects and engineers serving on a selection committee shall not receive compensation from Pima County for performing this service. A person who is a member of a selection committee shall not be a consultant under a contract awarded under the procurement or provide any professional services, construction, construction services, materials or other services under the contract. The selection committee shall evaluate based only on the selection criteria and relative weight of the selection criteria specified for selection of the firms established and published in the SFQ.

## **2.12 SOQ Submittals**

Pima County shall publish in the advertisement and SFQ the submittal due date and time and location. Any changes shall be handled pursuant to the SFQ addendum process.

Submittals must be received and time stamped at the location designated in the SFQ. Late submittals will NOT be accepted and will be returned unopened to the submitter.

Respondents shall submit SOQs in the quantity and format as required in the SFQ.

Prior to providing the SOQ submittals to selection panel for evaluation, Pima County will evaluate the SOQ submittal for responsiveness to the solicitation and for registration requirements, DBE compliance requirements, format compliance, professional licensure as required by 23 CFR 172.7 (a)(1)(iii)(A), and a check of SAM will be made to ensure Consultant is not debarred or suspended. Verification of the SAM system will be printed and maintained in the procurement file.

A list of firms to be interviewed will be sent to all Respondents at the conclusion of the written evaluations. This is made via a Notice to Respondents and proof of transmission of the Notice to Respondents to all respondents will be kept in the procurement file.

## **2.13 Non-Responsive SOQ Submittal**

Consultants responding to advertisements shall adhere to the format and instructions outlined in each SFQ Package. Issues that shall result in the rejection of an SOQ, include, but are not limited to, if the Consultant:

- Failed to provide a required Proposer's Solicitation List with valid AZ UTRACS registration numbers.
- Failed to acknowledge addenda to the solicitation.
- Failed to have a valid AZ UTRACS registration at the time of the submittal.
- Failed to ensure that a proposed Subconsultant has a valid AZ UTRACS registration at the time of the submittal.
- Failed to have required registration for Consultants and Subconsultants.
- Failed to follow the specific format requirements as identified in the SFQ package.
- Failed to be prequalified with ADOT prior to SOQ submission.
- Failed to be in good standing with the Arizona Corporation Commission at the time of submittal.
- Failed to have submitted the online SOQ Bidders/Proposer's list verification.
- Failed to submit the DBE Assurance Form certifying that Consultant will meet the established DBE goal or will make good faith efforts to meet the goal.

## 2.14 SOQ Evaluation

It is the goal of evaluation to ensure that Pima County selects the most qualified consultants, avoids public perception of favoritism or partiality in contract awards, and ensures that each consulting firm is given fair and equal consideration. Pima County requires that all procurements be conducted in a fair, open, equitable manner that promotes participation and competition in accordance with State Law and Federal Laws. It is recognized that individual perspectives are naturally biased by a variety of factors such as personal experience, education, management, and organizational culture and others. The objective of this procedure is to ensure consistent, neutral, fair, ethical and equitable evaluation of proposals while recognizing diverse perspectives and minimizing negative external influences on the evaluation process.

All evaluators shall possess a combination of experience and education to establish the competency required to fairly evaluate the solicited services. Evaluator nominees are subject to Procurement Department approval.

Pima County shall initiate an appropriately qualified selection committee for each request for qualifications. Pima County shall ensure that the selection committee members are competent to serve on the selection committee. Each selection committee must include one employee of Pima County. For contracts expected to exceed \$2,000,000.00 in value, the evaluation committee shall, when practicable, have seven members comprised of four members nominated by the department director, two members from other departments or jurisdictions, and one member from a qualified professional service firm.

Without the prior written approval of the Procurement Director evaluation committees may not include Pima County employee-superior/subordinate relationships.

The CCO will serve as the non-scoring Chair of the evaluation committee.

Potential respondents and participants in the solicitation to be evaluated, and individuals with a conflict of interest, may not serve on the evaluation committee.

Evaluators must execute a certification of competency, statement of no conflict of interest and agreement to support the defined procurement process schedule document prior to participating in any evaluation related to a particular solicitation.

The Requesting Department is responsible for nominating the evaluation committee members and managing the members to support the procurement timeline and schedules developed in conjunction with the Procurement Department staff.

The nomination of committee members shall be reviewed, and if considered appropriate, approved by the Procurement Department Commodity/Contracts Officer (CCO). Any supervisor-employee relationship among nominated evaluators must be disclosed. Nominations submitted to the Procurement Department shall include documentation that establishes the nominee's credentials and competency to perform the required evaluation tasks. The Procurement Director will be the final authority regarding the acceptance of proposed members.

The CCO assigned to conduct the solicitation shall provide oversight of the evaluation committee with the Requesting Department as required.

The CCO assigned to conduct the solicitation shall, with any necessary assistance from the County Attorney's Office, Evaluator, Requesting Department, or Technical resources, determine that each proposal is responsive, and each respondent responsible, before requesting the evaluation committee to evaluate the submittals.

Committee members shall agree to read and fully comprehend the solicitation documents, requirements and specifications prior to conducting an evaluation of proposals and to attend all required meetings in a manner that supports the procurement process schedule. Members that cannot or do not attend scheduled meetings may be excused from the panel.

Members agree to evaluate proposals utilizing only the published solicitation criteria without undue influence by other members or external forces. No evaluator's personal knowledge or experience with the respondent will impact scores or in any way jeopardize the integrity of the QBS evaluation process.

Members agree that all information, conduct and correspondence related to their participation in a solicitation process is considered confidential and shall not be discussed with other selection panel members or other non-selection panel members during the initial phase of the process without specific written authorization from the Procurement Department.

Evaluators shall, in a neutral and professional manner, independently evaluate and document the significant factors considered in developing their evaluation and score, and all factors that were, in the evaluator's judgment, determinative. When documenting the evaluation, evaluators should consider that evaluations are Public Records, may be utilized to address respondent protests, and may be reviewed by interested parties on request.

Upon receipt of submittals and evaluation forms from the CCO, evaluators shall agree to complete, sign and deliver their evaluation documents directly to the CCO as quickly as is possible and not later than the date and time established by the CCO. Said evaluation documents shall include comments justifying each criteria score relative to other proposals. No contact or discussion regarding the solicitation between evaluators is allowed during this phase. Evaluators may submit questions to the CCO.

The CCO shall tabulate the evaluation documents, conduct a consensus meeting with the evaluation committee to discuss the rationale for their scores, and provide the tabulation documents to the Requesting Department within seven work days from the date on which all evaluators submitted completed evaluation documents. Each panel members' scores are equally weighted and will be used unless they have been disqualified. Evaluator and tabulation documents shall be retained in the procurement solicitation file.

Panel member scores or panel members may be removed if any of the following conditions exist:

- Failed to Sign the Panel Member Confidentiality and/or Panel Participation Statement
- Failed to report a potential perceived conflict of interest
- Failed to maintain the integrity of the selection panel process (confidentiality)
- Failed to attend all required panel meetings
- Failed to support excessive high or low scores (possible skewing)
- Failed to provide comments to support scores

## **2.15 Selection Process**

After the scores for SOQs (and interview, if applicable) are compiled, an average score for each proposer is determined. The selection panel shall meet to discuss the scores; any selection panel member may elect to amend his or her score based on the discussion. After the panel has completed their discussion of the SOQs, scores are finalized.

The listing, in ranked order, of the most qualified firms who are recommended for selection shall be signed by all selection panel members and forwarded for PCDOT approval. PCDOT PM will approve of the selection in writing.

Pima County will maintain a record of all the solicitation documents, selection panel scores and comments and selection approval for review and inspection as required by FHWA or ADOT.

## **2.16 Selection Notification**

Pima County will issue a Notice of Intent to Negotiate to all respondents to the SFQ showing only the name of the firm with which Pima County intends to negotiate. This notice may be issued by email or facsimile. The notice and proof of transmission of the notice to each respondent to the SFQ will be maintained in the procurement file.

At the conclusion of negotiations, Pima County shall post notification of recommendation for award to the website designated in the SFQ. The County will make an effort to notify respondents of the posting of the Notice of Recommendation for Award and will keep documentation of such efforts in the procurement file; however, it cannot guarantee that every potential respondent will be notified each time. Therefore, as stated in the SFQ, it is the responsibility of respondents to periodically check the website for posting of the Notice of Recommendation for Award.

An offeror may file a protest in writing with the Procurement Director according to the procedures identified in this manual. Protests filed more than five days after the protester knew or should have known of the recommendation for award, or after contract award shall be considered untimely.

## **2.17 Debriefing Sessions**

Pima County may hold debriefs after execution of the contract with any firm responding to the solicitation. Debriefs shall be acknowledged and such acknowledgement maintained in the solicitation file. Debriefs consist of detailed evaluator scoring, comments, and score tabulations for all phases of the solicitation.

Digital reproductions of winning or non-winning SOQ(s) is not permitted in absence of a public records request.

## **2.18 Pima County's Rights**

Until the contract is signed by Pima County, Pima County reserves the right to:

- a. Cancel the solicitation;
- b. Reject any or all SOQs or proposals;
- c. Following a QBS selection, select the Consultant's SOQ that, in its judgment, will best meet the Department's needs according to the criteria outlined in the SFQ Package;
- d. Investigate, confirm, or verify, as deemed appropriate, information contained in proposals.

## SECTION III - NEGOTIATION THROUGH NOTICE TO PROCEED

### 3.1 Pre-Negotiations

Standard pre-negotiation practice is for Pima County to issue a request for cost proposal outlining the cost proposal instructions.

Failure to submit a cost proposal within agreed upon parameters and time may result in Pima County declaring a failed cost negotiation and proceeding to negotiate with the next highest ranked firm. Agreement on a final cost proposal shall not be later than sixty calendar days past the date of the intent to negotiate.

### 3.2 Fixed Fee

The fixed fee dollar value of the Consultant's compensation for rendering professional engineering services is a percentage of Direct Labor and Overhead only, based on the contract schedule, size, duration and complexity of the project and is non-negotiable by the Consultant. The overall final cost of a project reflects the complexity of the work, the degree of risk and fixed fee (profit).

Fixed fees shall generally not exceed 10% without review and approval by the Procurement Director.

Overhead and Fixed Fee shall be stated separately.

### 3.3 Pima County's Project Manager's Cost Estimate

In determining fairness and reasonableness, the Pima County shall consider scope, complexity, professional nature and estimated value of the services to be rendered as specified in 40 USC 1104(a).

Prior to receipt of the selected firm's initial cost proposal and request for FHWA Federal-Aid authorization, the ADOT PM and the PCDOT PM will prepare/refine an independent estimate of the work to be performed on the contract. This independent estimate should consider the person-hours and classifications to complete project tasks (which collectively result in total direct labor costs), other direct expense contract costs, and fixed fee. This estimate is only available for review by ADOT and Pima County, is confidential and as such shall not be released to the public at any time.

The CCO and PM should develop negotiation goals with respect to cost, scope and schedule before initiating negotiations. Maximum acceptable cost, minimum acceptable scope, maximum acceptable schedule, and tradeoffs among them should be considered, as should a minimum acceptable baseline. This process should be initiated early enough that it will be completed prior to contract award.

The independent estimate shall serve as a basis for negotiation. The independent cost estimate and all other negotiation activities and documentation shall be retained in accordance with 23CFR 172.7(a)(1)(v)(E) and 2 CFR 200.333.

### 3.4 Contract Compliance Requirements

#### a) Cost Accounting

Pursuant to 23 USC Section 112(b)(2)(C) requires contracts for engineering services to be performed and audited in compliance with cost principles contained in Part 31 of the Federal Acquisition Regulation (FAR).

According to 23 CFR 172.11(c), the Pima County shall provide reasonable assurance that consultant costs on contracts reimbursed in whole or in part with FAHP funding are allowable in accordance with the Federal cost principles and consistent with the contract terms considering the contract type and payment method. According to 23 CFR 172 (a)(4), Pima County shall use the Federal cost principles in determining the reasonableness, allowability, and allocability of other direct contract costs.

Pursuant to 23 CFR Part 172, 172.11(d) allows the FHWA, recipients, and subrecipients of Federal-Aid highway funds to share the audit information in complying with the State or subrecipients acceptance of Consultant's overhead rates pursuant to 23 USC 112 and this part provided that the Consultant is given notice of each use and transfer.

In cases where ADOT Audit & Analysis does not have a current overhead rate or audit in place Pima County will request a copy of a current overhead rate generated by a CPA firm.

The criteria used to determine allowability of contract costs are governed by 48 CFR Part 31. In seeking to interpret the FAR, Pima County utilizes AASHTO Uniform Audit and Accounting Guide and ADOT Consultant Audit Guidelines, 23 USC 112(b)(2)(B-C), 23 CFR 172.7, 49 CFR 18.22(b), which contain information on pre-award audit requirements, when Federal-Aid funds are involved.

It is a federal requirement that OH based consultant firms certify the cost certification form as required by 23 CFR 172.11(c)(3)(iii).

Capping of direct labor rates or other direct projects costs are inappropriate pursuant to 23 CFR 172.11.

Indirect costs may be updated annually in accordance with the Consultant's annual accounting period and with Federal cost principles as required by 23 CFR 127.11 (b)(1).

#### b) Anti-Lobbying/Disclosure

Federal Acquisition Regulation (FAR) prohibits the expenditure of Federal-Aid Highway Program funds to pay any person for influencing or attempting to influence a federal, state, or local agency or Congress in connection with the award of any Federal-Aid Highway Program funded contract, grant, loan or cooperative agreement. The Consultant is required to sign a statement certifying that to the best of its knowledge and belief that no Federal-Aid Highway Program funds have been paid or will be paid, by or on behalf of its Consultant for the purpose of lobbying.

All solicitations shall contain the following certification:

"Consultant certifies that to the best of their knowledge and belief that no Federal-Aid Highway Program funds have been paid or will be paid, by or on behalf of its firm for the purpose of lobbying: influencing or

attempting to influence a federal, state, or local agency or Congress in connection with the award of any Federal-Aid Highway Program funded contract, grant, loan or cooperative agreement.”

c) Insurance and Indemnification Requirements

In order for Pima County to enter into a contract with a Consultant for services, the Consultant shall meet the insurance requirements prior to the execution of the contract as evidenced by a Certificate of insurance with the necessary endorsements.

1. The 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. The 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 Pima County for review and approval.
3. An “indemnification” clause will be included in the contract which will be signed by the Consultant, to protect Pima County, State of Arizona, Arizona Department of Transportation, and FHWA and their employees.

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. Pima County in no way warrants that the above-required minimum insurer rating is sufficient to protect Consultant from potential insurer insolvency.

The 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 the Consultant, his 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 the Consultant from liabilities that might arise out of the performance of the work under this Contract by the Consultant, its agents, representatives, employees or Subconsultants, and the Consultant is free to purchase additional insurance.

The Consultant may purchase an excess or umbrella policy to secure these limits. If the 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.

**For projects in or adjacent to ADOT’s right of way:**

**IA. MINIMUM SCOPE AND LIMITS OF INSURANCE:** The Consultant shall provide coverage with limits of liability not less than those stated below.

**1. Commercial General Liability – Occurrence Form**

The policy shall include bodily injury, property damage, personal and advertising injury and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Products and completed operations coverage shall be maintained for three (3) years after completion of design
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000

<u>Contract Value</u>	<u>Required Insurance</u>			
\$0 to \$5,000,000	\$1,000,000	Each Occurrence;	\$2,000,000	Aggregate
\$5,000,001 to \$15,000,000	\$5,000,000	Each Occurrence;	\$5,000,000	Aggregate
\$15,000,001 to \$50,000,000	\$5,000,000	Each Occurrence;	\$10,000,000	Aggregate
\$50,000,001 & up	\$25,000,000	Each Occurrence;	\$25,000,000	Aggregate

- a. The Consultant shall be responsible for monitoring the Contract value as it increases and the Consultant shall be responsible for purchasing additional insurance to be in compliance with this Contract should the increase in Contract value require a higher limit of insurance. The Consultant shall provide a new certificate of insurance that reflects the increase in limits as required in 4.20(E) below.
- b. The policy shall be endorsed to include the following additional insured language: ***“Pima County, The State of Arizona, FHWA its departments, agencies, boards, commissions, universities and their officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant.”*** Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by this Contract.
- c. The policy shall contain a waiver of subrogation endorsement in favor of Pima County, the State of Arizona, FHWA their departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.

**2. Business Automobile Liability**

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

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

If work is performed on the active roadway then Consultant or Subconsultant shall provide a minimum of \$5,000,000 Combined Single Limit coverage.

- a. The policy shall be endorsed to include the following additional insured language: ***“Pima County, The State of Arizona, FHWA, their departments, agencies, boards, commissions, universities and their officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant, involving automobiles owned, leased, hired or borrowed by the Consultant.”*** Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by this Contract.
- b. The policy shall contain a waiver of subrogation endorsement in favor of Pima County, the State of Arizona, FHWA, their departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.
- c. Policy shall contain a severability of interest provision.

**3. Worker's Compensation and Employers' Liability**

- Workers' Compensation Statutory
- Employers' Liability
  - Each Accident \$1,000,000
  - Disease – Each Employee \$1,000,000
  - Disease – Policy Limit \$1,000,000

- a. The policy shall contain a waiver of subrogation endorsement in favor of Pima County, the State of Arizona, FHWA, their departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.
- b. This requirement shall not apply to: Separately, EACH Consultant or Subconsultant exempt under A.R.S. §23-901, AND when such Consultant or Subconsultant executes the appropriate waiver (Sole Proprietor/Independent Consultant) form.

**4. Professional Liability (Errors and Omissions Liability)**

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

<u>Contract Value</u>	<u>Required Insurance</u>			
\$0 to \$5,000,000	\$1,000,000	Each Occurrence;	\$2,000,000	Aggregate
\$5,000,001 to \$15,000,000	\$5,000,000	Each Occurrence;	\$5,000,000	Aggregate
\$15,000,001 to \$50,000,000	\$5,000,000	Each Occurrence;	\$10,000,000	Aggregate
\$50,000,001 & up	\$25,000,000	Each Occurrence;	\$25,000,000	Aggregate

- a. The Consultant shall be responsible for monitoring the Contract value as it increases and the Consultant shall be responsible for purchasing additional insurance to be in compliance with this Contract should the increased value of the Contract require a higher limit of insurance. The Consultant shall provide a new certificate of insurance that reflects the increase in limits as required in 4.20(E) below.
- b. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, the Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.
- c. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this Contract.
- d. Consultant is required to carry professional liability insurance regardless of the type of contract or the scope of work and it shall not be waived without prior approval from Risk Management.

**5. Aircraft Liability – Per Occurrence Form (if applicable)**

If the Consultant or their Subconsultant will be using aircraft to perform any portion of this Contract then aircraft liability shall be provided. The policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Hangarkeepers Liability	\$1,000,000
• Per Seat Limit	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$50,000
• Each Occurrence	\$5,000,000

- a. The policy shall be endorsed to include the following additional insured language: “Pima County, The State of Arizona, FHWA, their departments, agencies, boards, commissions, universities and their officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Consultant.” Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by the Contract.
- b. Policy shall contain a waiver of subrogation endorsement in favor of Pima County, the State of Arizona, FHWA, their departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Consultant.

## 6. Valuable Papers Coverage

Valuable papers insurance shall be included in the policy for a minimum of \$25,000 or in a higher amount sufficient to assure the restoration of any document, memoranda, plans, specifications, drawings, media, computer files, data or other information related to the work of the Consultant in the completion of this Contract.

- B. **ADDITIONAL INSURANCE REQUIREMENTS**: The policies shall include, or be endorsed to include, the following provisions:
1. The Consultant's policies shall stipulate that the insurance afforded the consultant shall be primary insurance and that any insurance carried by Pima County, the State of Arizona, FHWA, their agents, officials, employees shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
  2. Coverage provided by the Consultant shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- C. **NOTICE OF CANCELLATION**: With the exception of the 10-day notice of cancellation for non-payment of premium, any changes material to compliance with this Contract in the insurance policies above shall require a 30-day written notice to Pima County. Such notice shall be sent directly to Pima County Procurement Department, Design and Construction Division, 130 W. Congress, 3<sup>rd</sup> Floor, Tucson, AZ 85701 and shall be sent by certified mail, return receipt requested.
- D. **ACCEPTABILITY OF INSURERS**: Consultant's insurance shall be placed with companies duly licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A-VII or duly authorized to transact Workers' Compensation insurance in the State of Arizona. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE**: The Consultant shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. An insurance certificate submitted to the County representing insurance coverage must include an original signature from an authorized representative.
- All certificates and endorsements shall be received and approved by the County before work commences. Each insurance policy required by this Contract shall be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of this Contract.
- All certificates required by this Contract shall be sent directly to Pima County Procurement Department. The Contract number and project description shall be noted on the certificate of insurance. The Department reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.
- F. **SUBCONSULTANTS**: The Consultant is responsible for ensuring and/or verifying that all Subconsultants have current, valid, and collectable certificates of insurance that are consistent with

the minimum requirements within the Consultant Contract. This is applicable to all lines of insurance within the Contract. County reserves the right to request that the Consultant provide proof that its Subconsultants have the required insurance coverage at any time.

- G. EXCEPTIONS:** Requests for exceptions to insurance requirements for Subconsultant(s) shall be provided in writing to Pima County Procurement and County Risk Manager prior to the start of work and will be reviewed for any risks to the County. No work by the involved Subconsultant(s) shall proceed until County makes a decision regarding the request.
- H. INDEMNIFICATION REQUIREMENTS:** To the extent permitted by law, CONSULTANT shall indemnify and hold harmless COUNTY, the State of Arizona, ADOT, and FHWA its departments, agencies, boards, commissions and their officers and employees from all liabilities, damages, losses and costs, including reasonable attorney's fees and court costs, but only to the extent caused by any negligence, reckless or intentionally wrongful conduct of CONSULTANT or other persons employed or used by CONSULTANT in the performance of the Contract or subcontract. "Other persons employed or used" means a subconsultant to a consultant or design professional in any tier, or any other person or entity who performs work or design professional services, or provides labor, services, materials or equipment in connection with the Contract.

**For Projects NOT in or adjacent to ADOT's right of way:**

**IIA. 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 the 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, 3<sup>rd</sup> 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 the 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 the Department. 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.

**F. Indemnification Requirements:**

To the fullest extent permitted by law, CONSULTANT will indemnify and hold harmless COUNTY, their 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, their 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.

**d) Immigration Requirements**

All prime Consultants and Subconsultants are required to certify their compliance with all Federal, State and local immigration laws prior to the execution of a contract. Pima County contracts include contract language requiring Consultants and Subconsultants to comply with Federal, State and local law and regulations, allowing the right to inspect records and the right to take necessary action if violations occur to ADOT or Pima County.

Failure of the Consultants or Subconsultants to comply with the immigration laws with respect to any activity under the contract or any personnel performing or managing work under the contract shall be regarded as a material breach of the contract as outlined in Section 4.17 of these Guidelines.

**e) Federal-Aid Funded Contracts**

Pursuant to 23 CFR 172.7, additional considerations for Federal-aid Funded Contracts include:

- 1) (Intentionally Omitted – Not Applicable)
- 2) Contracts – Contracts and contract settlements involving design services for projects that have not been delegated to the State or Agency under 23 U.S.C. 106(c), that do not fall under the small purchase procedures in § 172.5(a)(2), shall be subject to the prior approval by FHWA, unless an alternate approval procedure has been approved by FHWA.

- 3) Major Projects – Any contract, revision of a contract or settlement of a contract for design services for a project that is expected to fall under 23 U.S.C. 106(h) shall be submitted to the FHWA for approval.
- 4) Consultant Services in Management Roles – When Federal-aid highway funds participate in the contract, the contracting agency shall receive approval from the FHWA before hiring a consultant to act in a management role for the contracting agency.

### **3.5 Cost Proposal Negotiations**

Pima County shall conduct negotiations include consideration of compensation and other contract terms that Pima County determines to be fair and reasonable. In making this decision, the Pima County shall take into account the estimated value, the scope, the complexity and the nature of the professional services to be rendered. Pima County shall enter into negotiations with the highest qualified firm on the final list.. If Pima County is not able to negotiate a satisfactory contract with the highest qualified firm on the final list, at compensation and on other contract terms Pima County determines to be fair and reasonable, Pima County shall formally terminate negotiations with that firm, and then undertake negotiations with the next most qualified 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. If Pima County terminates negotiations with a firm on the final list and commences negotiations with another firm on the final list, Pima County shall not in that procurement recommence negotiations or enter into a contract for the professional services covered by the final list with any firm on the final list with whom Pima County has terminated negotiations.

Negotiations with the highest-ranked firm may not extend more than sixty (60) days from the date of approval of the recommendation for award by the Board of Supervisors. Subsequent negotiations with the second and/or third-ranked firm(s) may not extend more than sixty (60) days from the date of initiation of negotiations. These limits may be extended with the written approval of the Procurement Director.

Negotiations may be terminated at any time, without regard to duration, when there is a stalemate and it reasonably appears that further negotiations with that firm would not be fruitful. In this circumstance, a letter terminating negotiations should be sent to the firm and negotiations opened with the next ranked firm.

Anytime negotiations have extended for fifty (50) days without success, the CCO should identify with the department their preferred option for continuing/completing negotiations. There are basically three alternatives:

- (i) Immediate termination of negotiations if it reasonably appears that further negotiation with that firm would be unsuccessful.
- (ii) One more round of negotiations. If unsuccessful, terminate and initiate negotiations with the next-ranked firm.
- (iii) The department may seek the approval of the Procurement Director to extend the negotiation period.

Four components of cost should be addressed and negotiated separately:

1. **Direct Labor:** Direct labor proposals may be based on either Salary/Wage Rate plus fringe benefits or the Direct Labor Rate. These rates may be compared to those of other similar firms, or to regional reports or other data compilations. The rates may vary, but must bear a reasonable relationship to those paid by other firms. Direct labor rates will be verified by a certified payroll submitted by the firm utilizing a form similar to that in use by ADOT Engineering Consultants Section Certified Payroll and Proposed Rate Form for Straight and Average Rates.

2. **Overhead:** The County will generally pay the actual overhead rate established by documentation in the form of an audit or audited financial statement applying Generally Acceptable Accounting Principles (GAAP) or Federal Cost Accounting Standards. Overhead rates approved by the Defense Contract Audit Agency, General Services Administration, or other Federal, state or local public agencies may be accepted. Notwithstanding the foregoing, overhead rates that appear excessive may be challenged and negotiated lower, even if accepted by other agencies.

*Multiple Rates:* There may be circumstances where a firm applies more than one overhead rate to their billing—for example, a firm might apply one rate for work performed in the local office and a different rate if the work is performed at their corporate headquarters or a field site. Care should be taken to ensure that the appropriate rate or rates are reflected in the Contract and applied to contractor billings.

If a consultant is not able to provide documentation to establish its overhead rate with sufficient certainty, then the CCO may use the firm's overhead rate specified in firm's other contracts with the county or other government agencies or negotiate a provisional overhead rate in the contract, provided that the contract shall provide for an adjustment to prior payments and the establishment of a final overhead rate before final payment is made under the Contract.

3. **Fee:** The Fee represents the Consultant's profit for services, assumption of responsibility and risk, and costs not allowable elsewhere. The Fee shall be a fixed amount ("fixed fee") negotiated on the basis of the scope of work, difficulty of the project, level of risk, and the estimated cost of labor and overhead to complete the project. The Fee may not exceed ten percent (10%) of the estimated cost of labor and overhead without the specific approval of the Procurement Director. Departments seeking approval for a higher fee rate must solicit the Procurement Director's approval directly.

The fee will be allocated proportionally among design tasks. One-half of the fee for each task may be allocated to and paid in conjunction with progress payments for that task. The balance of the fee for that task will be paid upon completion of the task. No markup is allowed.

4. **Other Reimbursable Costs:** The County will pay the reasonable direct costs associated with a Project in accordance with Federal cost principles, subject to certain limitations. The Contract should identify expected categories of direct costs, such as telephone calls, printing or duplicating design drawings, copying, etc., and also limit certain other categories of direct costs as follows:

The County will not pay a markup on Other Reimbursable Costs.

Reimbursement for local mileage and travel shall be limited to the Pima County rates current as of the date of travel for projects 50 miles outside the Tucson metro area.

5. **Baseline:**

Design contracts should be agreements to complete the design (or design phase) within the amount and time stated in the contract. There should never be a request for more money or time unless something has changed. Unfortunately, there are a substantial number of assumptions and expectations upon which the contract is based - such as complexity, level of effort, internal and external reviews, regulatory issues, public comment, etc., etc.- that do not appear in the contract; as a result, it is often very difficult to identify what has changed to justify additional time or funding.

Establishing a baseline is a way of reaching agreement on as many material assumptions, expectations and exclusions as reasonably possible to further refine the bases upon which agreement on the contract amount, level of effort, and schedule are predicated. Significant deviations from the baseline beyond the control of the County or Consultant may justify additional time or funding.

Negotiation of the baseline should focus on identifying and agreeing upon the assumptions, expectations and exclusions that may potentially affect the level of effort or schedule needed to complete the work. An assumption that it might rain on Wednesdays, for example, would be pointless since it's unlikely to impact the design effort whether it rains or not. On the other hand, an assumption that EPA will reject a new rule under consideration that would directly affect the project could have a significant impact on design effort if the assumption is incorrect. On a smaller scale, an expectation that public comment would be mostly favorable and amenable to response in 10 or fewer hours of design time could likewise have an impact on design effort if the public uniformly hates the design.

The Consultant should be requested to provide a list of assumptions, expectations and exclusions to provide a basis upon which to negotiate. Negotiations should focus on adding to or deleting from the list, resolving disagreements regarding expected durations of activities, such as County reviews, and estimating the impact of third-party activities, such as public comment. The completed list will be incorporated into the contract as the baseline.

6. **Structuring Payment:**

A. **Contract Task Orientation:** To the maximum extent practicable, the scope of work for A&E contracts should be drawn as a series of tasks with clearly identifiable activities and deliverables associated with each task. A schedule should be associated with each task, as well as the estimated labor hours and overhead, and a pro rata share of the fee. The contract should require that Consultant invoices assign labor hours and direct costs to the tasks for which the services and costs were incurred. One-half of the fee may be paid in conjunction with progress payments; the remainder will be paid upon completion of the task.

B. **Subconsultant:** Charges for subconsultant work may be reimbursed at the actual cost to the Consultant. Subconsultants must submit with their pay applications a statement that their fee does not exceed ten percent (10%).

7. **Rate Adjustments**

For longer-term contracts of more than one-year duration, it may be appropriate to provide for an adjustment to the Consultant's hourly and overhead rates upon contract renewal, subject to the requirement that the Consultant provide appropriate documentation to justify new rates. The Contract must stipulate that any rate adjustments must be incorporated into the Contract by amendment.

Costs are reviewed to ensure that person-hour estimates and costs submitted by the Consultant are fair, reasonable and within PM estimate and County's cost guidelines and compliant with FAR 48 CFR 31 cost principles, if Federal-Aid funded. The independent estimate is confidential and only available for review by ADOT and FHWA and shall not be released to the public at any time.

Indirect cost rate (overhead rate) or established unit rates or commercial item prices established through Pima County or current ADOT's audit review or by a cognizant audit that has been reviewed for reasonableness in accordance with the FAR cost principles contained in 48 CFR 31 for contract negotiation, administration, and payment as specified in 23 USC 112(b)(2)(B-D) and 23 CFR 172.7. Indirect cost rates, unit rates or commercial item prices shall not be negotiated.

Selected Consultant(s) shall have a compliant accounting system and submit specified financial information to Agency as required.

For Federally funded, Race-Conscious project specific contract with DBE Goals, the notice to proceed cannot be issued until the applicable DBE affidavits are submitted, reviewed and approved by BECO.

Pima County will maintain a Record of Negotiations (RON), documenting their cost negotiation efforts in their project file, including dates of any negotiation meetings, comparison of total hours, costs and overhead included in the Consultant and County estimates.

Pima County's protest procedures described in this manual shall be followed if failed negotiations occur. Unsuccessful or failed cost negotiation may occur for a number of reasons including, but not limited to:

- 1) Failure to submit cost proposal and supporting documentation (i.e. DBE documents, insurance certificates, direct expense back-up, etc.) in the required format
- 2) Failure to submit cost proposal within the prescribed timeframe
- 3) If irreconcilable differences occur between Pima County and Consultant in agreeing on a cost or scope for the project over an agreed upon period of time. After the second revision or more than the agreed upon number of calendar days after the initial submittal of the cost proposal), Pima County may declare that there is an impasse.
- 4) Failure to come to an agreement on person-hours for the tasks to be performed, the level/classification of the staff required to complete the tasks, other miscellaneous direct costs, or the final cost of the project.
- 5) Failure to submit or respond timely and appropriately to requests for information from any related County offices (Procurement, Audit & Analysis, or Project Manager)
- 6) Failure to have Prime Consultant's and Subconsultant's Schedule of Indirect Costs and Financial Statements available for review.

If any of the above cases exist, the County reserves the right to reject the Cost Proposal of the selected firm and proceed to negotiate with the next highest ranked firm in accordance with 40 USC 1104. If Pima County is not able to negotiate a satisfactory contract with the highest qualified person or firm on the final list, at compensation and on other contract terms Pima County determines to be fair and reasonable, Pima County shall formally terminate negotiations with that person or firm, and then undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list.

If in a procurement under this section Pima County terminates negotiations with a person or firm on the final list and commences negotiations with another person or firm on the final list, Pima County shall not

in that procurement recommence negotiations or enter into a contract for the professional services covered by the final list with any person or firm on the final list with whom Pima County has terminated negotiations.

Justification for negotiating and/or awarding the contract to a firm other than the originally selected Consultant shall be documented in the contract file.

Pima County also reserves the right to terminate cost negotiations for administrative reasons including, but not limited to, lack of funding, termination or invalidation of an Intergovernmental Agreement or other extenuating circumstances.

### **3.6 Final Contract Approval**

Pima County's final contract approval process will be followed.

The managing department director or PM will notify the CCO that contract negotiations have concluded and the final cost proposal is acceptable to the department. CCO will issue a Notice of Recommendation for Award which will be transmitted to all respondents and posted on the County website. The Notice of Recommendation for Award and transmission of such will be maintained in the procurement file. CCO will draft contract, obtain county attorney signature, and route contract to consultant for signature and return of required insurance information. Once a complete contract and insurance documents are received, CCO will schedule the award with the appropriate award authority for award and final execution.

Work on projects funded with Federal-Aid Highway Program funds must be authorized by the FHWA prior to the advertisement and execution of the contract and Pima County shall verify that the Consultant is in good standing and does not have any pending Debarment and/or Suspensions.

### **3.7 Notice to Proceed**

Once signed by the Consultant and Pima County, the contract is considered fully executed.

On Federally funded projects/contracts, a notice to proceed shall not be given until FHWA authorization is received.

A copy of the executed contract, along with a Notice to Proceed (NTP) letter, will be distributed to the Consultant and distributed to appropriate Agency and ADOT LPA personnel.

Pima County is not responsible for any cost incurred prior to the NTP date.

### **3.8 Contract Advance Notice to Proceed (ANTP) – Not Applicable to Pima County**

## **SECTION IV - CONTRACT ADMINISTRATION**

### **4.1 Post Award Information**

After the Notice to Proceed (NTP) is issued, Pima County shall provide the Prime Consultant with information and forms needed to successfully fulfill the terms of the contract.

Pima County shall follow their post award instructions process. The key areas that should be addressed the following:

- Invoicing Requirements and Compliance
- Contract Modification Submittal and Requirements
- DBE Requirement for Contract Modifications using Federal Funds
- DBE Program Contract and Subcontract Reporting Compliance
- Annual Overhead adjustments, if applicable
- Prompt Pay Requirements
- Key Personnel Changes
- Firm Name Change, Acquisition, Merger, Transfer of Ownership
- Adding a Subconsultant
- Certification of Payments to DBE firms at Contract closeout

### **4.2 Pima County Vendor Registration**

Consultants will be registered as vendors with Pima County no later than the time of contract execution.

### **4.3 Monthly Progress and Work Hour Reports**

Pima County's monthly progress reporting process should be followed.

### **4.4 Progress Payment Reports**

Pima County's consultant invoice and payment approval process should be followed. Pima County's policy must be in compliance with the timeframes outlined in the Prompt Pay Law (A.R.S. § 28-411).

Consultant is required to adhere to the DBE Program PPR Reporting requirements. Forms are reviewed by County first and then submitted to BECO for final approval.

### **4.5 Prompt Pay Legislation (A.R.S. § 28-411)**

In accordance with A.R.S. § 28-411 (Prompt Payment to Consultants and Subconsultants), Pima County must issue payments to Prime Consultants within 21 calendar days after receipt of PPR/invoice. The law also requires the Consultants to pay their Subconsultants within seven (7) calendar days after issuance of payment by Pima County, unless exceptions exist within the agreed-upon Consultant/Subconsultant agreement. Incomplete or incorrect PPRs/invoices will be returned to the submitter within seven (7) calendar days of receipt by Pima County. The 21 calendar day timeframe for Pima County payment will begin anew upon receipt of the corrected invoice. If payment reports are not received by ADOT within five (5) business days of the invoice date identified in the contract, ADOT will not "approve and certify" the invoice for payment and it will be returned to the Consultant. Any invoice from a Consultant for progress payments shall be deemed approved and certified by the department unless within seven

(7) days from the date the department receives the invoice the department sends the Consultant written notice by first class mail of those items that the department does not approve and certify under the terms of the agreement.

Prime Consultants shall not withhold Subconsultants' payment if Pima County has paid for the full value of services rendered. Failure by the Prime Consultant to invoice Pima 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 and Prime Consultant shall be subject to disqualification in accordance with Section I of these procedures. Pima County reserves the right to request that Prime Consultants provide proof of payment to Subconsultants at any time.

#### **4.6 Contract Amendments**

Changes to the terms of the contract shall be authorized by the issuance of an approved written Contract Amendment. Any amendment to the contract shall be by formal written approval and signed by all parties.

Work on projects funded with Federal-Aid Highway Program funds must be authorized by the Federal Highway Administration (FHWA) prior to execution of a contract modification. This authorization will be in the form of County's notification to ADOT that a contract modification is in process along with details of the modification. Formal approval by ADOT is not required to proceed with the contract modification as long as the modification does not exceed the approved funding amount.

If the contract was assessed a DBE goal, prior to the approval of the contract modification, the consultant must prepare the applicable DBE (affidavit or good faith effort) forms, and submit to BECO for approval. The CM cannot be approved or executed until BECO's approval of the DBE forms.

Pima County is not responsible for payment of any additional work performed by the Consultant prior to receipt of a fully signed/executed contract amendment. Any extra work performed by the Consultant, without an approved and fully executed contract amendment is done at the Consultant's risk.

#### **4.7 Advance Authorizations – Not Applicable to Pima County**

#### **4.8 Post Design Services**

If Post-Design Services (PDS) are required during the construction phase of the project, the services shall be negotiated by the Project Manager. The PDS shall be authorized by means of an executed contract amendment and the PM will negotiate the contract amendment only after FHWA authorization is obtained. Notice to Proceed will be formally issued after County's approval and execution of the contract amendment.

Regardless of the contract type, PDS is billed at specific hourly rates as defined in the contract (direct labor, overhead, and fixed fee) and set forth in the initial Post Design CM, plus FAR allowable expenses. Additional classifications and rates for needed services will be negotiated accordingly. The Consultant shall only bill for actual hours worked. All FAR allowable expenses must have supporting documentation to be accepted.

#### **4.9 Name Change, Merger, Acquisition, Consolidation or Transfer of Ownership**

For Federally funded contracts, in cases when either a Consultant or Subconsultant (e.g. corporation, limited liability company, partnership, or joint venture) acquires, merges, or consolidates with another company, or undergoes any form of corporate restructuring or change in ownership, Consultant or Subconsultant under the contract with Pima County shall notify Pima County of legal name or ownership changes prior to the date when the name or ownership change is legally signed/approved and before the new Consultant or Subconsultant is authorized to begin any work on acquired firm's contract(s).

The Consultant or Subconsultant changing its legal name due to merger, acquisition, consolidation and/or transfer of ownership shall take responsibility for fulfilling all obligations, liabilities, and contract terms/conditions for all Pima County contracts of the acquired firm.

Pima County's procedures must be followed and should take into consideration the following:

1. A letter, on company letterhead, indicating the new name and reason for the change. The letter shall also include:
  - i. Effective date of the change.
  - ii. List of active, pending closeout, on-hold and in negotiations, Pima County contracts affected by the change with contract description. Indicate which contract(s) the firm served as a Consultant or Subconsultant.
  - iii. A statement certifying that the new/acquiring Consultant and/or Subconsultant shall assume all obligations and liabilities set forth in the respective listed contracts between the new/acquiring Consultant and Pima County.
  - iv. A statement certifying that no changes have been made in the Key Personnel responsible for the affected contracts. Nothing in this section shall affect or limit the agency's authority to refuse changes in Key Personnel. If a Key Personnel change occurs resulting from the merger, acquisition, consolidation and/or transfers of ownership, the Consultant or Subconsultant shall submit a separate request to obtain Pima County's approval for the Key Personnel change in accordance with the contract terms and conditions relating to key personnel changes.
  - v. A statement certifying that the Consultant or Subconsultant agree that the Department is not obligated to pay or reimburse them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the name change, other than those that the Department in the absence of the organizational change would have been obligated to pay or reimburse under the terms of the contract.
2. A copy of the "in-good standing" documentation from the Arizona Corporation Commission (ACC) of the new/acquiring Consultant or Subconsultant.
3. Updated professional license(s) of the new/acquiring Consultant or Subconsultant
4. Updated W-9 Form of the new/acquiring Consultant or Subconsultant

The contract shall be modified to include the acquiring firm's name by a Contract Amendment. If applicable, the consultant shall re-prequalify with Pima County under the new entity/firm name.

#### **4.10 Change in Key Personnel**

No substitution or transfer of personnel, specifically identified in the Statement of Qualification (SOQ) proposal shall be made without prior written approval by Pima 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 the 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 (Pima County 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;
5. Any 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 and listed on cost proposal documents during contract negotiation.

A request for change in Key Personnel shall include the following: The Consultant must submit a letter requesting the key personnel change, reasons for the change and certify that the overall intent of the contract will not be impaired by the change.

The request 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.)

Pima County shall have the right to approve or reject the proposed successor. Pima County will consider any change in Key Personnel, and at its discretion may decide to terminate the contract for convenience if, in Pima County's sole discretion, the Department believes that the project team is materially different as a result of the change.

Pima County must maintain records of any key personnel changes when Federal funded contracts are used. Records must be available for review upon request by ADOT and/or FHWA.

#### **4.11 Control, Utilization and Disposition of Property or Equipment**

It is not anticipated that lease, rental or purchase of property, equipment or software to perform work related to the project will occur under any contract funded by FHWA. Should Federal funds be used to purchase any lease, rental or purchase of property, equipment or software to perform work related to the project, prior written approval of the Project Manager and ADOT PM must be obtained.

The control, utilization and disposition of property or equipment acquired using Federal-Aid Highway Program shall be determined by FHWA and ADOT and County in accordance with the property management standards set forth in 2 CFR 200 , ADOT Manual - FIN 11.02 and shall follow County's Fixed Assets procedures in both property identification and inventory control processes. All items valued at \$5,000 or over will be assigned an asset number and tag by the County's department of finance and risk management. Items will be tagged by the administering County department. Asset number tags for assets valued between \$1,000 and \$4,999 will be attached by the department. Assets valued over \$5,000

will be tracked in the County's asset management system. Assets valued between \$1,000 and \$4,999 will be traced by the department by a monthly asset tag report submitted to the finance department.

#### **4.12 On-Call Contract Task Order Assignment**

ADOT has not approved the procurement process for On-Call consulting services. Pima County intends to seek approval from ADOT at a future date.

#### **4.13 Contract Time Extension**

Contract time extension shall be by formal written amendment. Pima 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.

A Time Extension of no more than 365 calendar days may be processed. All contract Time Extensions will be executed by a Contract Amendment. Time extensions for contracts using Federal-Aid Highway funds beyond five (5) years from the original Notice to Proceed date must be approved by ADOT and the FHWA.

No work shall be performed beyond the contract expiration date.

#### **4.14 Contract Suspension**

Pima County will inform the Consultant verbally of any "suspension" and shall follow up with a written confirmation in the form of a contract amendment that the project is on "Suspension" and that the firm is not entitled to any compensation once a contract is placed on suspension. The consultant will be notified via executed contract modification when work may or shall resume, and informed of the adjusted contract completion date.

#### **4.15 Consultant Performance Evaluations**

Consultant evaluations will be conducted after major tasks identified in the contract with final evaluation to be completed by Pima County and the Consultant.

Pima County will maintain records of all evaluations when Federal funded contracts are used. Records must be available for review upon request by ADOT and/or FHWA.

#### **4.16 Errors and Omissions**

Professional Liability (Errors and Omissions) Insurance is required on all work conducted according to this manual. The policy limits shall be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The policy shall cover professional misconduct or negligent acts for those professionals defined in the Scope of Work of the contract. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, consultant shall warrant 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. No waiver, release or settlement of claims or potential claims against a Consultant shall be valid without written approval of Pima County Transportation Director, when project is funded with Federal funds.

The County relies on the quality of the services provided by its Consultants selected and contracted with to perform the services. If County determines that the Consultant has made an Error and Omission (E&O) in the work product delivered to the County under the terms of a Contract, Consultant shall make necessary revisions or corrections resulting from E&Os without additional expense to County. 'Error and Omission' 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 the Contact. County and the Consultant shall actively pursue the resolution of E&Os at the lowest possible level within a reasonable timeframe in accordance with the Terms and Conditions of the contract and as required by 2 CFR 200.18. No waiver, release or settlement of claims or potential claims against a Consultant shall be valid except when made in writing by the County Director of Transportation.

If County determines the Consultant has made any E&Os, in the work product delivered to the County under the terms of the Contract, the Consultant shall be immediately notified of the E&O, verbally and in writing, and invited to participate in corrective actions in order to mitigate the cost. The consultant notification process is normally initiated at the Project Manager level. The following steps will be utilized to facilitate the review and processing of E&O claims:

1. Errors and Omissions are identified
2. An initial review is conducted by the County to determine the validity, responsibility, and extent of the problem
3. Notification is given to the Consultant
4. If the value of the errors/omissions is determined to be less than five percent of the construction contractor's bid, or \$20,000 (whichever is less), the County will maintain the documentation for a possible future claim.
5. If the errors/omissions exceed five percent of the construction contractor's bid, or \$20,000 (whichever is less); or if the cumulative total of claims held by County exceeds five percent of the construction contractor's bid, or \$20,000 (whichever is less), the County may file a formal claim. The Project Manager will review the data and reconcile the costs to determine if the County should pursue a claim.
6. The amount of the initial claim will be the cost as determined by the County less five percent of the construction contractor's bid, or \$20,000 (whichever is less). Any future claims will not be subject to this reduction.
7. The claim will, at minimum, cover the following areas:  
Statement of circumstances: brief description of who, what, where, when, and why;  
County's intention: dollar amount of consultant's liability for the claim  
A copy of the construction force accounts and/or construction change orders, and  
An explanation of the County's administrative review process.
8. The Consultant may pay the claim or may request an administrative review. The administrative review shall involve the Project Manager, direct supervisor and other management personnel as needed.
9. If the review process does not resolve the claim, the County may pursue the claim through arbitration or litigation, as appropriate.
10. When claims are resolved, Pima County will notify all parties in writing.

#### **4.17 Breach of Contract**

In the event of a dispute regarding any part of the contract or the obligations or performance hereunder, County or consultant 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 Pima County Department administering the 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 the contract notwithstanding the existence of any dispute.

Either party may pursue any remedies provided by law for the breach of the contract, provided, however, that the procedures above 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 the contract.

#### **4.18 Contract Completion**

After technical review establishes that all phases of the contract have been completed to the satisfaction of Project Manager and the ADOT PM, the contract will be closed out.

Prior to closing a contract, using Federal funds, the PM shall:

1. A Final Consultant Evaluation is initiated, scored and completed by the County.
2. County notifies the Consultant, in writing (Initial Closeout Letter), of the final closeout procedure and requests a written response that includes the following:
  - a. All work is complete
  - b. No further charges are pending
  - c. Percentage of total contract dollar to Disadvantaged Business Enterprises (DBE) with supporting documentation, if applicable.
  - d. Records will be kept in accordance with the Records Retention provision of the contract (Section 4.22).
3. Consultant submits a final payment report/invoice.
4. Completion of a Certification of Payments to DBE Firms for each DBE involved in the contract is required for contracts that were given Notice to Proceed (NTP) **on or after July 1, 2010**. If applicable, a copy of this form is located at: <http://www.azdot.gov/docs/business/certificate-of-dbe-payments>.
5. Consultant provides a disposition listing of property or equipment purchased under this contract having a useful life of more than one (1) year and an acquisition cost of \$100.00 or more, if applicable.
6. Consultant must return any software covered by County Agreement, if applicable.
7. Final audit is conducted per Section 4.19 below.

#### **4.19 Final Incurred Cost Audit**

Final/Incurred Cost Audit (ICA) of the Consultant's costs will 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 for Cost Plus Fixed Fee and Cost Plus Fixed Fee by Task Order contracts. ICAs for each project will be conducted according to ADOT's Uniform Terms and Conditions and may be accomplished in one of the three following ways:

1. County may utilize available staff with sufficient technical knowledge to complete the audit.
2. County may hire an independent and unbiased audit company from a list of available audit firms possessing technical knowledge and expertise to do the audits on the firms.
3. County may request ADOT Audit/Analysis group to perform the audit.

If necessary, a contract modification will be issued to either increase or decrease the contract total based on the this determination.

#### **4.20 Termination for Convenience**

Contracts may be terminated for convenience of Pima County as outlined in the contract. The Consultant shall be compensated only for work satisfactorily completed or allowable costs incurred prior to the termination of the contract. The Consultant is not entitled to compensation for loss of the contract or for lost profit. The amount due to the Consultant is determined by Pima County and shall be based on the terms of the contract.

Pima County's termination for convenience language is as follows:

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.

#### **4.21 Ownership of Data**

On Federally funded projects, all confidential documents, materials and deliverables developed, patented, copyrighted or created by Consultant under contract with Pima County are property of Pima County, ADOT and FHWA for perpetuity. These documents and materials which include, but are not limited to, all original drawings, field data, estimates, field notes, plans, tracings, specifications, documents, calculations, maps, survey notes, reports, photographs and computer programs, shall be delivered to Pima County prior to close-out of the contract. Consultant may retain and use copies thereof. County agrees that the material will not be used for any project other than the project for which it was designed without the expressed permission of Consultant.

The release of any of the information is prohibited without written approval of Pima County and must follow the policies in Section 1.16 of this document.

#### **4.22 Records Retention/Destruction**

Pima County's contract contains language that instructs the Consultant and its Subconsultants to retain 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).

All documents shall be retained for auditing, inspection and copying at ADOT's or FHWA's request or any other authorized representative of the Federal Government.

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.

Upon completion and final closeout of contracts, physical/paper or electronic contract files and any supporting materials shall be maintained in accordance with the Pima County, ADOT and State Record Retention Center Records Retention/Destruction Policy and Schedules.