

**REQUEST FOR PROPOSALS ISSUED BY
THE CITY OF EL PASO
PURCHASING & STRATEGIC SOURCING DEPARTMENT**

SOLICITATION NO: 2016-419R
TITLE: WIC CLINIC LEASES OF REAL PROPERTY
DEPARTMENT OF PUBLIC HEALTH

DATE ISSUED: MARCH 29, 2016

An original, signed, sealed, OFFER to furnish the Real Property Leasehold set forth below will be received at the place indicated below, until:
2:00 PM, local time, WEDNESDAY, April 27, 2016

NOTICE When used in Request for Proposals, the terms 'Offer' and 'Proposal' or 'Bid'; and 'Offeror' and 'Respondent' or 'Landlord' or 'Lessor'; and 'Lease' and 'Contract' are interchangeable

**ADDRESS OFFERS TO:
DIRECTOR
PURCHASING & STRATEGIC SOURCING DEPARTMENT
CITY OF EL PASO**

MAIL TO:

CITY OF EL PASO
PURCHASING & STRATEGIC SOURCING DEPARTMENT
300 N. CAMPBELL, 1ST FLOOR
EL PASO, TX 79901-1153

OR

HAND DELIVER TO:

CITY OF EL PASO
PURCHASING, 1ST FLOOR
300 N. CAMPBELL
EL PASO, TX 79901

FOR ADDITIONAL INFORMATION CONCERNING THIS SOLICITATION, CONTACT:

Diane C. Nunez, Procurement Analyst
Telephone: [915] 212-1183/212-1184 FAX: [915] 212-0044 Email: nunezdc@elpasotexas.gov

EXPIRATION OF OFFERS

The Offeror agrees, to furnish the Real Property Leasehold] at the rental prices offered, and delivered at the designated point or points, within the time set forth below, if this offer is accepted within ONE HUNDRED TWENTY [120] consecutive days from the date set for the receipt of offers. All offers shall expire on the 120th day after the offers are open unless the City of El Paso requests an extension of the offers in writing and the offeror agrees to extend in writing.

AMENDMENTS TO SOLICITATION

Receipt of all numbered amendments to Solicitations must be acknowledged:

| <u>AMENDMENT</u> | <u>DATED</u> | <u>AMENDMENT</u> | <u>DATED</u> | <u>AMENDMENT</u> | <u>DATED</u> | <u>AMENDMENT</u> | <u>DATED</u> |
|------------------|--------------|------------------|--------------|------------------|--------------|------------------|--------------|
| A001 | _____ | A002 | _____ | A003 | _____ | A004 | _____ |
| A005 | _____ | A006 | _____ | A007 | _____ | A008 | _____ |

OFFER FOR REAL PROPERTY LEASEHOLD SUBMITTED BY

LANDLORD/COMPANY NAME AS IT APPEARS ON ORGANIZATION CERTIFICATE ISSUED BY STATE IN WHICH COMPANY WAS ORGANIZED) _____

STREET ADDRESS _____

P.O. BOX NUMBER _____

CITY, STATE AND ZIP CODE _____

&

TELEPHONE NUMBER _____

FAX NUMBER _____

- HIRE EL PASO 1ST LOCAL VENDOR REGISTRATION ID# _____

E-Mail address _____

PLEASE CHECK PREFERRED ADDRESS FOR RECEIVING SOLICITATION DOCUMENTS.

OFFER EXECUTED BY [PLEASE PRINT]

NAME AND TITLE OF PERSON AUTHORIZED TO OBLIGATE LANDLORD/COMPANY _____

SIGNATURE AND DATE OF OFFER _____

WITHOUT AN ORIGINAL SIGNATURE ON THIS OR OTHER DOCUMENT BINDING THE OFFEROR, THE OFFER WILL BE REJECTED

NOTE: AWARD OF THE CONTRACT RESULTING FROM THIS SOLICITATION WILL BE MADE TO THE SUCCESSFUL OFFEROR BY AN AUTHORIZED WRITTEN NOTICE, WHICH MAY BE IN THE FORM OF A LETTER NOTICE OF AWARD OR A PURCHASE ORDER ISSUED BY THE CITY OF EL PASO. THIS IS A ONE TIME CONTRACT

CITY OF EL PASO, TEXAS

RFP: 2016-419R

REQUEST FOR PROPOSALS

FOR

WIC CLINIC LEASES OF REAL PROPERTY -

3,000 – 5,000 SF OFFICE SPACE

IN EAST AREA OF THE CITY OF EL PASO

**George Dieter Area ([79936] within 5 miles of [1757 George Dieter Dr. Ste. #109])
Lee Trevino ([79936] within 5 miles of [1840 Lee Trevino Dr. Ste 201])**

DUE DATE: APRIL 27, 2016

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PART 1 – GENERAL INFORMATION

1.1.1 Background Information

The City of El Paso is contracted with the Department of State Health Services to verify eligibility of and provide WIC services to clients in El Paso County. In an effort to make services convenient and accessible throughout the county, the City leases office space in certain geographical areas of El Paso.

1.2 Solicitation Purpose

The purpose of this solicitation is to obtain office space appropriate to serve WIC population per geographical area.

PART 2 – NOTICES TO PROPOSERS

2.1 Public Disclosure Proposal Information

Offerors are cautioned that once an Offer for the Real Property – Lease of Office Space is opened, all information contained therein will be available to the **PUBLIC** unless the information is accepted from the requirements of Government Code Section 552.021 pertaining to Open Records.

The exception that allows the City to protect information that, if released, would give advantage to a competitor or bidder does not apply after the bidding is complete and the contract has been awarded. *Trade secrets, commercial or financial background data and privileged or confidential information* may be accepted from public inspection. If any information contained in your offer qualifies for an exception because it falls into one of the categories above it should be clearly marked “CONFIDENTIAL” and the basis of your claim of confidentiality should be stated. Data so identified will be maintained as a protected record, to the extent permitted by law. Offerors who claim that information contained in a bid offer should be protected from public disclosure after the award of the contract may be asked to support such claim if the City receives an Open Records request for the information and requests a determination by the Attorney General. [Rev. 04-03-98]

2.2 Bid Net Notification

Note: any changes in due date or material changes for any RFP's/Solicitations will be posted on the solicitations page of the City of El Paso Purchasing Department's website:

http://www.elpasotexas.gov/financial_services/invitations.asp

It is the Offeror's responsibility to ensure that they have all pertinent information regarding solicitations, including all amendments prior to submitting their offer. Please check the website, even after submitting a Offer, to ensure that you have all amendments as they may be posted at any time, up to and including the day of bid opening.

Recommendation(s) for formal awards shall be posted on the City's website the Thursday afternoons prior to the Tuesday City Council Meeting wherein the recommendation shall be presented. Offerors are responsible for monitoring the City's website for said postings.

2.3 Communications

2.3.1 Cone of Silence/Anti Lobbying Policy

The City's Cone of Silence/Anti Lobbying Policy was adopted to ensure a fair and competitive bidding environment by preventing communication between City officials, employees, or representatives and parties involved in the bidding process that could create an unfair advantage to any party with respect to the award of a City contract.

During the period of in which the City has issued a solicitation, including a competitive bid, request for proposal (RFP), request for qualifications (RFQ), highest qualified bid (best value), competitive sealed proposals, design-build, public-private partnership, any other type of solicitation required by law, or the giving of a notice of a proposed project, which shall begin on the day that is advertised and end on the date that the notice of the award has been posted by the City Clerk for placement on the agenda, no person or registrant shall engage in any lobbying activities with City officials and employees.

For an unsolicited or competing proposal for a public-private partnership, the period in which no person or registrant shall engage in any lobbying activities with City officials and employees shall begin on the date that the City receives a notice of intent to submit an unsolicited proposal and end on the date the notice of award has been posted by the City clerk for placement on the agenda.

If contact is required with City employees, such contact will be done in accordance with procedures incorporated into the solicitation document and the City's contracting policies. Any person or entity that violates this provision may be disqualified in accordance with Section 2.94.130 of this chapter. Furthermore, any person who knowingly or intentionally violates the provisions of this policy, with respect to the solicitation or award of a discretionary contract may be prohibited by the City council from entering into any contract with the City for a period not to exceed three years.

The Cone of Silence/Anti Lobbying Policy prohibits any communication or lobbying activities during the Cone of Silence period, by any person, including but not limited to, bidders, lobbyists or consultants of bidders, service providers or potential vendors and any the following:

1. City Staff and City Consultants, including any employee of the City of El Paso, any person retained by the City of El Paso as a Consultant on the project, or any person having participated in the development, design, or review of documents related to the project.
2. City Officials, including the Mayor, Council Representatives and their respective staff.
3. Members of the City's Selection Committee, whether City employees or outside experts appointed or selected by the City.

The Cone of Silence/Anti Lobbying Policy does not apply to:

Questions of Process and Procedure, including oral communications with the Purchasing Director or Bid Administrator, provided the communications are strictly limited to matters of process or procedure already contained in the solicitation document. A minimum of ten days will be provided for questions during solicitation unless otherwise stated in the Solicitation Schedule of Events in the documents.

Pre-Proposal/Pre-Bid Conferences, including oral communications at pre-proposal or pre-bid conferences, oral presentations before selection committees, contract negotiations, and public presentations made to the Mayor and Council Representatives during a duly noticed public meeting.

Written Communications, to the Purchasing Analyst/Agent identified in the solicitation.

2.3.2 Wage Theft – The City of El Paso Code – Chapter 3.46

3.46.010 Definition

1. Wage Theft Adjudication occurs when:

Employer is criminally convicted as an employer pursuant to Section 61.019 of the Texas Labor Code for failure to pay wages; or

Injunctive relief is granted in district court under Section 61.020 of the Texas Labor Code against the employer for repeated failures to pay wages as required by Chapter 61 of the Texas Labor Code; or

A wage payment determination order becomes final under Section 61.055 or Section 61.060 of the Texas Labor Code; or

The Texas Workforce Commission assesses an administrative penalty under Section 61.053 of the Texas Labor Code against the employer for acting in bad faith in not paying wages as required by Chapter 61 of the Texas Labor Code; or

Employer is convicted for Theft of Service under Section 31.04 of the Texas Penal Code; or

Court of competent jurisdiction finds that an employer engaged in wage theft.

2. Employee and employer have the meanings by Texas Labor Code, Section 61.001.
3. Wages means compensation owed by an employer for labor or services rendered by an employee, whether computed on a time, task piece, commission or other basis.
4. Wage Enforcement Coordinator shall mean the person designated by the City Manager to receive and investigate claims of wage theft and to create, maintain a Wage Theft database.
5. Wage Theft Complaint means a written complaint filed with the Wage Theft Coordinator alleging any instance of wage theft by an employer.

Section 3.46.020 Wage Theft Coordinator

A. Appointment. The City Manager shall designate a Wage Theft Coordinator to perform the duties identified in this Section.

B. Duties. The Wage Theft Coordinator shall:

1. Wage Theft Adjudication Database- the Wage Theft Coordinator shall create and maintain a database of employers located or operating within the City of El Paso who have a Wage Theft Adjudication record. The Wage Theft Database will be created on a “complaint basis” and populated with information provided by third parties. The Wage Theft Coordinator shall be under no obligation to investigate wage theft or to prosecute complaints.

2. Substantiate whether a proposed party to a City Contract has a Wage Theft Adjudication record or part of the Wage Theft Adjudication Database.
3. Receive, review, and process wage theft complaint according to the process established in Section 3.46.040.
4. Coordinate with the Purchasing Director to ensure that the notice of the City's Wage Theft ordinance is included in all the City's bid documents.
5. Provide and present an annual report to City Council regarding the number of employers in the Wage Theft Adjudication Database and an update on the status of the enforcement of the City's Wage Theft ordinance.

Section 3.46.030 Wage Theft adjudication Database

A. Inclusion in Database. No employer shall be included in the database until the

Wage Theft Coordinator has:

1. Confirmed that an employer has a Wage Theft Adjudication record;
2. Provided written notice at the address provided by the complainant, or on the documents evidencing the wage theft adjudication of the inclusion of the employer in the Wage Theft Adjudication Database.
3. Allowed the employer thirty (30) days from the date of the notice to protest the employer's inclusion in such database and provide the Wage Theft Coordinator evidence that the employer should not be included in the Wage Theft Adjudication Database. In the case of a wage theft judgment, the Wage Theft Coordinator shall not include the employer in the Database upon proof of full payment of outstanding wage theft adjudication judgment.

B. Identity of Employer. An employer operating as a business entity shall be listed by its corporate name, address and type of business organization. If the employer is an individual, the person's name, business address, type of business or occupation shall be included.

C. Removal from Database. An employer shall be removed from the database if:

1. A Wage Theft Adjudication has been annulled, withdrawn, overturned, rescinded or abrogated, and such fact has been confirmed by the Wage Theft Coordinator; or
2. Employer provides proof of full payment of an outstanding wage theft adjudication judgment; or
3. Five (5) years or more has elapsed since the date of the employer's most recent Wage Theft Adjudication.

Section 3.46.040 Wage Theft Complaints Procedure

A. Non- City Contracts. If no City contract is involved, the Wage Theft Coordinator shall assist persons with wage theft complaints by referring the complaint to the Texas Workforce Commission.

B. City Contracts.

1. **Filing a Complaint.** A person employed in connection with a city contract who has a good faith belief that he is the victim of wage theft may file a wage theft complaint with the Wage Theft Coordinator in writing. The complaint shall contain fact including but not limited to: identity of the employer, date(s) on or during which the wages were earned and were due to be paid, the amount of the wages alleged to have been withheld or unpaid.
2. **Notification and Resolution of the Complaint.** The Wage Theft Coordinator shall notify the employer of the receipt of the wage theft complaint. Employer shall attempt to resolve the alleged issue with the affected employee by written agreement within thirty (30) days from the receipt of the City notification. Employer shall notify the Wage Theft Coordinator if the issue was resolved between the Employer and the affected employee.
3. **Texas Workforce Commission.**

If no resolution is achieved, the complainant shall be referred to the Texas Workforce Commission (“Commission”).

The Wage Theft Coordinator shall seek to determine status of the complaint at the commission. The Wage Theft Coordinator shall place Employer in the Wage Theft Adjudication Database if it appears that the Commission has made a finding that wage theft occurred.

Section 3.46.050 Retaliation Prohibited

No City Contractor shall retaliate against any person who has filed a wage theft complaint pursuant to this Chapter. Retaliation means action to discharge from employment, discipline, or otherwise punish an employee for filing a wage theft complaint in good faith.

If the Wage Theft Coordinator determines that retaliation has occurred, the Wage Theft Coordinator shall refer the matter to the City Attorney for appropriate action.

Section 3.46.060. Sanctions and Penalties- City Contracts

Existing City Agreement.

1. In the event the City becomes aware of the fact an Employer acting under a contract which was awarded prior to the effective date of this Ordinance has been adjudicated for wage theft, the City may terminate the contract.
2. Prior to terminating the contract the City will provide Employer with thirty (30) days’ notice and opportunity to provide full proof of payment of outstanding wage theft adjudication judgment.

- The award of future City contracts after termination of an existing contract due to an Employer's wage theft adjudication shall be managed as a New City Agreement in this section.

New City Agreement.

1. In the event the City becomes aware an Employer with a wage theft adjudication record has submitted a bid or proposal for City work prior to the award of a contract, the City shall deem the Employer non-responsible and refuse to enter into a City Agreement with such Employer for a period of five (5) years after the date of final adjudication.

2. Prior to deeming the Employer as non-responsible, the City will provide the Employer with thirty (30) days' notice and opportunity to provide full proof of payment of outstanding wage theft adjudication judgment.

2.3.3 Request for Clarification

In order to meet the City's schedule it is extremely important that requests for clarification or additional information be submitted in writing no later than April 13, 5:00P.M. MST. Questions submitted after this date may not elicit a response. All proposals or requests for clarification should be sent to the following:

BY E-MAIL

Diane C. Nunez,
 Procurement Analyst
 Fax: (915) 212-0044
 Email: nunezdc@elpasotexas.gov

IN WRITING (MAIL OR HAND DELIVERY)

City of El Paso
 Purchasing & Strategic Sourcing Department
 300 N. Campbell, 1ST Floor
 El Paso, TX 79901-1153
 Attn: Diane C. Nunez

2.4 Schedule of Events

The following Schedule of Events represents the City's estimate of the timetable that will be followed in connection with this solicitation:

| EVENTS | DATE AND/OR TIME |
|--|----------------------------|
| Release Request for Proposal | March 29, 2016 |
| Pre-Proposal Conference: | April 13, 2016 10:00 A.M. |
| Last Day for Offerors to Submit Written Questions | April 18, 2016 5:00 P.M. |
| Answers provided | April 20, 2016 6:00 P.M. |
| Submission of proposals | April 27, 2016 |
| Evaluations | Approximately May 9, 2016 |
| Presentations & Best & Final Offers (If Requested) | Approximately May 11, 2016 |
| Contract Award Date | Approximately May 24, 2016 |

The City reserves the right, at its sole discretion, to adjust this Schedule of Events as it deems necessary. If necessary, the City will communicate adjustments to any event in the Schedule of Events in the form of an amendment. Amendment to this RFP will only be issued and posted on the City's website at: http://www.elpasotexas.gov/financial_services/invitations.asp

Pre- Proposal Conference

A Pre-Bid Conference meeting will be scheduled Tuesday, **April 13, 2016 10:00 A.M. (MST)** at the City of El Paso City Hall 1, 300 N. Campbell St., El Paso, Texas 79901, 1st Floor Plaza Conference Room – Purchasing & Strategic Sourcing Department. Vendors are encouraged to participate in person or telephonically. If participating telephonically, Dial-in Conference Call Number 605-562-0020 and Access Code 314379396 by 10:00 A.M. (MST) April 13, 2016.

2.5 Lease/Contract Term (Initial and Option Terms)

The successful Respondent(s) shall lease the Office Space to the City in accordance with the bid offer and substantially consistent with the terms of the contract, a form of which is attached as **Exhibit “A”**. The initial lease term shall be for three (3) years from the Effective Date of the Contract, e.g., the date on which the Contract is executed by the City of El Paso (the “Initial Term”).

Option Terms

The City of El Paso shall have the option to extend the term of the Contract for up to two (2) additional terms of three (3) years each. The total contract period shall not exceed nine (9) years from the City of El Paso RFP #2016-419R effective date of the Contract. The City Manager or designee may exercise the City’s option to extend, without further need for City Council approval.

Contracting Officer (CO) and Contracting Officer’s Representative (COR)

Acceptance of services will be the responsibility of the Contracting Officer (CO), who also serves as City of Paso Purchasing Director, or designee. The Contracting Officer is responsible for final approval and acceptance of all services rendered. Upon contract execution, the Contracting Officer will delegate a Contracting Officer’s Representative (COR).

Following the award of the Lease Contract, the City’s Real Estate Manager and Director of the Department occupying the leasehold property shall be the Contracts Administrator for the administration and management of the executed Contract.

2.6 Notices of Instruction to Offerors

1. Signature of Offer to person Authorized to Sign

All offers shall bear an original signature, in ink, of a responsible officer or agent of the Owner of the Real Property. Failure to sign the Offer portion of the Solicitation, Offer and Award form, or to include a substitute signed document binding the Offeror, will be the basis for declaring a proposal non-responsive.

2. Effective Period of Proposals

Proposals should expressly state that the offer will remain in effect until at least 120 consecutive days from the date set for the receipt of offers and may be accepted by the City of El Paso at any time on or before such date.

3. Required Number of Copies

Offer (bid or proposal) must be submitted in original form with five (5) additional copies, unless otherwise stated herein.

4. Offer Submission Instructions

Offer must be sealed when presented to the Purchasing Department. Offers will be received by the City of El Paso until **2:00 P.M., local time, on Wednesday, April 27, 2016.** **Proposals will not be publicly opened and read aloud.**

5. Addressing Instructions

The envelope containing the offer must be addressed as follows:

City Of El Paso
Purchasing & Strategic Sourcing Department
300 N. Campbell, 1st Floor
El Paso, Texas 79901-1153
Attn: Director

Also, write the Request for Proposal Number, Request for Proposal Title, Proposal Title, and Proposal Opening clearly on a visible section of the envelope.

6. Labeling Of Proposals/Bids [Rev 6/15/05]

The Due Date and Solicitation Number must be written on the outside of the package containing the offer. The City Purchasing Division may open any unlabeled submittal to identify it properly. Offerors are required to identify their package to protect the integrity of their proposals and to fully avail themselves of the evaluation and selection process.

7. Offeror Delivery Responsibility

Bids received at the Purchasing Office after the specified date and time will not be accepted. Package delivery services such as FedEx, UPS, etc. deliver packages addressed to the Director of Purchasing directly to the Purchasing Department. U.S. Postal Service deliveries, including Express Mail, are only delivered to the Mail Room at City Hall and may or may not be delivered by the Mail Room to the Purchasing Division by the time and place proposals are recorded. The Offeror accepts all responsibility for delivering its offer to address stated above within the specified time or the offer will be considered non-responsive and will be mailed back unopened. If the envelope does not reflect a return address, it will be opened for the sole purpose of obtaining the return address.

8. Descriptive Literature

Descriptive literature, where applicable, containing complete information sufficient for the City to determine compliance with the specifications must accompany each proposal, in Duplicate. If an Offeror wishes to furnish additional information more sheets may be added.

The City is not responsible for locating or securing any information that is not identified in the offer and reasonably available to the City, and the City will not be responsible for locating or securing information not included with the offer. In conducting its assessment the City may use data provided by the Offeror and data obtained from other sources, but while the City may elect to consider data obtained from other sources the burden of providing thorough and complete information rests with the Offeror.

9. Offer Documents, Supporting Literature and Related Data

Related data, where applicable, will be made part of the proposal. All documents, literature and related data submitted as an offer become the property of the City of El Paso.

10. Alternate Offers

The City of El Paso is not accepting alternate proposals for review, evaluation and/or consideration.

11. Solicitation Changes or Clarifications

Requests for changes or clarifications to this solicitation are welcomed by the Purchasing Department for its consideration, provided the requests are in writing and received by April 18, 2016 5:00PM (MST). Requests received after that time may not elicit a response. Refer to Requests for Clarification in Communication Section for more details.

12. Acknowledgement of Solicitation Amendments

All Amendments will be acknowledged on the *Solicitation of Offers* form (first page of this solicitation) by [writing the amendment date and initialing in the blank space]. Failure to do so may cause the proposal to be rejected. It is the Offeror's responsibility to ensure that all information regarding the RFP, including all amendments, is included in the offer. Amendments may be posted at any time up to and including the due date.

13. Proposal/Bid Preparation Cost

This solicitation does not commit the City of El Paso to pay any costs incurred in preparing and submitting the proposal or to contract for the real property leasehold specified. This RFP is not to be construed as a contract or a commitment of any kind, nor does it commit the City of El Paso to pay for any costs incurred in the preparation of a formal presentation, or for any costs incurred prior to the execution of a formal contract.

14. Additional Information

For further procedural information concerning this Request for Proposal contact the Contracting Officer or designee as the City's point of contact for contract award and administration (refer to in the Communication Section 2.5 for contact details).

15. Contract Performance

The Respondent shall be responsible for the lease of the real property set out in the Lease Contract and any amendments. The real property is subject to inspection, evaluation, and acceptance by City of El Paso. City of El Paso may employ all reasonable means to ensure that the office space leased is in compliance with the Contract.

16. Notification to Unsuccessful Offerors

All awards are made by the City Council of the City of El Paso. All City Council agenda are posted on the City of El Paso's Web Page for review by all Offerors. The URL is: <http://www.elpasotexas.gov>.

17. Acceptance or Rejection of Proposals

The City reserves the right to accept or reject any or all proposals, to waive all minor technicalities, and to accept the proposal or proposals determined to be the most advantageous to the City. Additionally, the City may accept a proposal subject to an exception if, in the sole judgment of the City, the proposal meets or exceeds the City's specifications.

Lease Award

- A. Award may be made without discussion of offers received. Therefore, your proposal should be submitted on the most favorable terms, from a price and technical standpoint, possible. The lease will be awarded to the business concern whose proposal will be most advantageous to the City, price and other factors considered. Once awarded the lease must be executed within 30 days.
- B. There will be no public opening of proposals. All proposals will be confidential until the lease has been awarded. Evaluation of price in accordance with the evaluation criterion will be on the basis of the total price, for the three year term, including the option to extend the term of the Contract for up to two (2) additional terms of three (3) years each. Electricity and/or gas will be metered separately and will be paid by the City apart from the lease.

18. Failure to Respond to Solicitations

Any Offeror who fails to respond to three consecutive solicitations will be purged from the mailing list. It is the Offeror's responsibility to remain on the mailing list under his requested commodity classes.

19. Time

[RESERVED]

20. Debriefing Requests

A written request for a debriefing should be directed to the Purchasing Analyst identified in **Request for Clarification in Part 2, Item 2.3.2** within five (5) days after the date of award. Debriefing requests will be scheduled with the appropriate evaluation committee and Purchasing representative.

Only an Offeror who has actually submitted a proposal may appeal an award decision.

21. Protest

Failure to follow the requirements of the Protest procedures established by the City of El Paso, Texas, shall constitute a waiver of all protest rights. Protest must be made after the Council agenda has been posted and by 5 p.m. the day before the Council meeting in which the award will be made. The Offeror must write a letter to Bruce D. Collins, Purchasing Director, using the phrase "Proposal Protest" to the address listed above. Protest must be sent by certified or registered mail or delivered in person. Note: the recommendation for award is posted on the City's website at least 72 hours before each Tuesdays Council meeting.

The written protest should include 1) the Request for Proposal number and should clearly state, with particularity, the relevant facts believed to constitute an error in the award recommendation, or desired remedy; 2) a specific identification of the statutory or regulatory provision that the Protesting Offeror alleges

has been violated and the provisions entitling the Protesting Offeror to relief; 3) a specific factual description, with particularity, of each action by the City that the Protesting Offeror alleges to be a violation of the statutory or regulatory provision that the Protesting Offeror has identified pursuant to item (2) of this paragraph (mere disagreement with the decisions of City employees does not constitute grounds for protest). If there is no disputed issue of the material fact, the Protest must indicate this as well.

Only the information provided within the protest period will be considered for response.

22. Offer Expenses and Pre-Contract Costs

This request does not commit the City to pay for any costs incurred in the preparation and submission of proposals or for any other costs incurred prior to the execution of a lease.

PART 3 - SCOPE OF WORK

3.1 Scope Of Work And Minimum Requirements

Lease Terms And Conditions

The provisions of the following attached articles and documents will become a part of the resulting lease:

- A. Lease for Real Property (reference attached draft)
- B. Solicitation for Offer Unit Costs for Adjustment
- C. Terms and Conditions Lease of Real Property
- D. Representations and Certifications – Lease of Real Property
- E. Requirements

Scope of Work – Lease of Office Space

Building Specifications: 3,000 to 5,000 sq. ft.

The space to be leased shall be a minimum of 3,000 to 5,000 usable square feet of office space. The office space must be appropriate to house approximately 150 persons, at any given time.

Space Efficiency

The design of the space offered must be conducive to efficient layout and good utilization, while providing full accessibility for persons with disabilities.

1. One (1) waiting area to accommodate a minimum of forty (40) people at least one (1) electrical outlet per wall, each outlet to be childproofed or located 36 inches off the floor. One outlet to accommodate a mounted TV. Childproofed means having the outlets safely protected by plastic covers that are not easily removed by children. Commercial grade flooring or equivalent quality to be approved by the City.
2. One (1) classroom to accommodate 20 to 25 people with one electrical outlet per wall and one locking closet. One outlet able to accommodate a mounted TV. Commercial grade flooring or equivalent quality to be approved by the City.
3. One (1) clerical/file area to be separated from the waiting area by a counter at desk height. 3-4 stations with separate dedicated electrical and phone/data outlets for computers. Must have four (4) five double gang boxes four voice/data work area outlets on wall which terminate in the telecommunications room. Must also have a filing area and with at least two (2) outlets per wall.

4. One (1) employee lounge with electrical outlets in all the walls, a telephone jack, a sink and cabinet, and an adjoining employee restroom. Plaster or painted and taped gypsum board or mineral acoustical tile. Break/employee lounge area(s) shall contain sufficient electrical capacity to supply a refrigerator(s), microwave oven(s), a high volume coffee maker, adjoining employee restroom, with commode, mirror, sink, cabinet, hand dryer, exhaust fan, and soap dispenser. Each break/employee lounge area shall also be equipped with a minimum 6-ft. long counter including storage cabinets above and below with one minimum 30-in. wide accessible counter area with knee space clearance for a person using a wheelchair, in accordance with ADA. An accessible sink, equipped with sanitary drain, shall be located within the counter top area, with knee clearance below, and shall provide hot and cold potable water. Sufficient water connections shall be provided to accommodate refrigerator ice maker(s). A modern commercial grade paper towel dispenser and waste receptacle shall also be located in this area, also conforming to the reach heights over obstructions as required by ADA.
5. One (1) locking janitor's closet with shelves and either a mop-sink or floor drain sink. Janitor closets with service sink or a floor drain sink, hot and cold water, and ample storage for cleaning equipment on shelves. Storage rooms shall have built-in storage shelves to be installed in the class room, employee lounge and in the clerical area.
6. Two (2) public restrooms with commode, mirror, sink, cabinet, hand dryer, exhaust fan, and soap dispenser and one (1) water fountain. Plaster or painted and taped gypsum board, unless alternatives are approved by the City. Separate ADA compliant toilet facilities for men, women and employees shall be provided. Employee toilet facilities must be located next to employee lounge. Each bathroom shall have sufficient toilets enclosed with modern stall partitions and doors, urinals (in men's room) separated by panels at least 2-ft. deep and 4-ft. high, and hot and cold water. Each toilet room shall also be equipped with recessed floor drains. Water closets and urinals shall not be visible when the exterior door is open. Each main toilet room shall contain:

Equipment:

- a) A mirror above the lavatory.
- b) A toilet paper dispenser in each bathroom stall that will hold at least two rolls and allow easy unrestricted dispensing.
- c) A coat hook on inside face of door to each water closet stall.
- d) At least one modern hand dryer, soap dispenser and waste receptacle for every two lavatories.
- e) Ceramic tile or comparable wainscot from the floor to a minimum height of 4-ft. 6-in.
- f) A disposable toilet seat cover dispenser.
- g) A counter area of at least 2-ft. in length, exclusive of the lavatories (however, it may be attached to the lavatories) with a mirror above and a ground fault interrupt-type convenience outlet located adjacent to the counter area.
- h) Drinking Fountains - The Lessor shall provide a minimum of one chilled drinking fountain. The water shall be chilled. Approximately 50 percent or at least one (whichever is greater) of the water fountains shall be ADA compliant.

7. Seven (7) private offices. Three (3) of the offices must have a Lab area with sink and counter on same wall. All offices must have phone/data lines and power outlets.
8. Up to four (4) private offices minimum size of 150 SQFT.
9. In addition there must be other rooms as indicated elsewhere, i.e., restrooms, mechanical rooms, electrical rooms, janitor closets, etc. There must be a reception area with space for a desk at the main entry of the office space, unless waived by the City. Installation and/or relocation of furniture within the leased space will be provided by the City or a contractor satisfactory to the City. All furniture will be provided by the City, unless furniture is available as an alternative.
10. Installation and/or relocation of furniture within the leased space will be provided by the City or a contractor satisfactory to the City. All furniture will be provided by the City, unless furniture is available as an alternative.
11. Ceilings in the office space must be drop down ceilings. Finished ceilings are not required in any high bay areas. Ceilings must be flat plane in each room with fluorescent light fixtures. Ceilings are to be finished as follows unless an alternate finish is approved by the City.
12. Paint colors, tiles, carpet, door finishes, cove base, etc., shall be color coordinated. Selection of these items must be approved by the City. Commercial grade flooring or equivalent quality to be approved by the City.
13. Windows -Office space must have windows on exterior perimeter walls, unless waived by the City. All windows shall be weather tight. Operable windows must be equipped with locks and screens.
14. Wall Coverings-Physical Requirements: Prior to occupancy, wall coverings are to be generally flat surfaces with a finish approved by the City.
15. Doors
 - a) Doors (Exterior) - Exterior doors shall have a minimum opening of 36-in. width for a single door or 72-in. width for double doors, shall be heavy duty, full flush, hollow steel construction, solid core wood, or aluminum-framed insulated tempered glass. Wood doors shall be at least 1.75-in. thick. Exterior doors shall be weather tight, equipped with automatic door closers, and shall open outward at least 90 degrees. Exterior double doors equipped with an astragal shall have an installed coordinator for proper closure. Rear entrance door(s) shall include a double door with a minimum opening of 72-in. by 80-in. adjacent to loading zone. Hinges, pivots, and pins shall be installed in a manner which prevents removal when the door is closed and locked.
 - b) Doors (Interior) - Doors must have a minimum opening of 36-in. by 80-in. Doors shall be 1.75- in. thick, solid core, mounted in metal frames or wood frames. The maximum leaf size on exit doors is 4-ft. They must be flush, natural wood, veneer faced, or equivalent finish as approved by the City. They shall be operable by a single effort and must be in accordance with Uniform Building Code requirements. All designated exit doors must open at least 90 degrees in the direction of travel for personnel egress.

- c) Doors (Maneuvering Clearances) - The walk, landing or floor area for doors that open onto walkways, ramps, corridors, and other pedestrian paths of travel, shall be clear and level, with a slope no greater than 1:50 ratio and extend a minimum of 5-ft. from the swing side of the door, 4-ft. from the opposite side, a minimum of 1.50-ft. Past the latch side (pull side), and a minimum of 1-ft. past the latch side (push side) of the door. Dimensions of the level maneuvering space at doors shall conform to ADA.
 - d) Doors (Hardware) - Doors must have heavy duty hardware with hardware stops (wall or floor mounted). All public use doors shall be equipped with kick plates. All door entrances from public corridors and exterior doors shall have automatic door closures. Operating hardware on accessible doors shall have a grip and operation which facilitates use with one hand without tight grasping, tight pinching, or twisting of the wrist.
 - e) Outside and perimeter doors must be equipped with 5-pin, tumbler cylinder locks and strike plates and must be operable from the inside. The City reserves the right to request cylinder locks on interior corridor doors, as required. All locks must be equipped with new core locks and be master keyed prior to occupancy. The City must be furnished at least two master keys and two keys for each lock. The Lessor shall strictly account for all keys (exterior and interior) distributed to the City and Lessor's support personnel, by location and use.
 - f) Doors (Identification) - Door identification shall be installed in approved locations adjacent to office entrances. The form of door identification must be approved by the City. Toilet, stairway, and corridor doors must be identified by the international symbol of accessibility at a height of 54 to 66-in. above the floor to the centerline of the sign, and wherever possible, mounted on the wall at the latch side of the door. Seldom-used doors to areas posing danger to the blind must have knurled or acceptable plastic abrasive coated handles. Tactile warning indicators shall be used to identify exit stairs. Exit doors must be provided with lighted signs, prominently displayed above the door.
16. Replacement: All wall covering is to be maintained in "like new" condition for the life of the lease. Wall covering must be replaced or repaired at the Lessor's expense, including moving and replacing furnishings (except where wall covering has been damaged due to the negligence of the City) anytime during the occupancy by the City if it is torn, peeling, or permanently stained; the vinyl tile in the restrooms must be replaced or repaired if it is loose, chipped, broken, or permanently discolored. All repair and replacement work is to be done after working hours. At the request of the City.
17. Floor Coverings and Perimeters - In all office space areas, flooring shall be vinyl tile. Floor perimeters on partitions must be vinyl. Resilient Flooring (Replacement): The flooring shall be replaced by the Lessor at no cost to the City prior to or during City occupancy when it has curls, upturned edges, backing or underlayment is exposed, or other noticeable variations in surface color or texture. Includes moving and return of furniture. At the request of the City.
18. A minimum of 45 parking spaces shall be provided for City use for the 3,000 to 5,000 usable square feet of office space. On-site parking must at least meet current local code requirements.

19. Building shall have adequate heating and air conditioning and venting to all areas as proven by a test and balance report submitted prior to acceptance of the premises and must be maintained in good working conditions all year. Adequate means able to maintain a constant temperature of 74 degrees regardless of external temperature.
- a) The HVAC system for all areas shall be capable of maintaining temperatures 74 degrees F, regardless of exterior temperature. HVAC system must conform to local commercial equivalent temperature levels and operating practices in order to maximize tenant satisfaction. However, thermostats shall not be set below 65 degrees Fahrenheit during the heating season nor above 78 degrees Fahrenheit during the cooling season. Temperatures must be maintained throughout the leased premises and service areas, regardless of outside temperatures, during the hours of operation specified in the lease.
 - b) Thermostats shall be secured from manual operation by key or locked cage, and be place in clerical area, unless waived by the City. A key shall be provided to the City. Areas having excessive heat gain, heat loss, or affected by solar radiation at different times of the day, shall be independently controlled.
 - c) Lessor will provide a programmable thermostat for after-hour and weekend control, with a 3-hour override capability to restore normal workday temperature settings.
 - d) Equipment Performance: Temperature control for all spaces shall be assured by concealed central heating and air conditioning equipment. The equipment shall maintain space temperature control over a range of internal load fluctuations of plus 0.5 watt/sq. ft. to minus 1.5 watts/sq. ft. from initial design requirements of the tenant.
 - e) All filters shall be regularly replaced with new filters in accordance with manufacturers recommended operating procedures.
 - f) During working hours in periods of heating and cooling, ventilation shall be provided in accordance with American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE) Standard 62, Ventilation for Acceptable Indoor Air Quality, where physically practical.

20. Telephone service shall be in place and ready for Lessees to hookup.

- a) There shall be a central or main telecommunications area (room) in the facility as identified and provided by the Lessor. The room shall be located within the area it serves so that the maximum linear distance of cabling between the telecommunications room and the telecommunications outlets does not exceed 295 ft. for office space areas.
- b) All offices and supplemental space, excluding the break room, shall have at least one voice/data drop. Each voice/data drop shall consist of a voice and data cable, identified on both ends with the appropriate room number and outlet number, routed between the telecommunications room and the space being served. 12-in. (minimum) of spare cable shall be left at each voice/data drop for the City's connection.
- c) The City will provide, install, and maintain telecommunications equipment including telephones, multiplexers, Ethernet switches, wireless network access points, interface equipment, and peripheral equipment, as required. Additional voice/data drops, as needed after occupancy, may be pulled by designated cable installers under subcontract with the City.

- d) Plans denoting location of voice and data wiring drops shall be submitted for the City's approval prior to installation. Based upon review, the City reserves the right to add additional drops, as required, prior to final plan approval.
- e) The City's acceptance of the Lessor provided and installed voice/data cable is contingent upon the Lessor's successful testing of the completed system, including wiring and terminations, by a third party certified cable installer under subcontract with the Lessor. The test results data shall be provided to the City prior to occupancy of the office space. Any problems associated with the Lessor supplied cable and/or installation of the cable must be corrected by the Lessor at no additional cost to the City.

21. Electrical power service shall be in place and ready for Lessees to hook-up. Mechanical, Electrical, Plumbing (General)

- a) The Lessor shall provide and operate all building equipment and systems in accordance with applicable technical publications, manuals, and standard procedures.
- b) The Lessor shall maintain preventative maintenance records for the life of the lease.
- c) Mains, lines, and meters for utilities shall be provided by the Lessor.
- d) Exposed ducts, piping, and conduits are not permitted in office space.
- e) The Lessor shall be responsible for meeting the applicable requirements of local codes and ordinances.
- f) Electrical plans shall be submitted for City approval prior to installation. Based upon review, the City reserves the right to add additional receptacles, as required, prior to final plan approval.

22. Lighting - Modern low brightness, parabolic type 2-ft. by 4-ft. or 2-ft. by 2-ft. fluorescent fixtures using no more than 2.0 watts per square foot shall be provided. Such fixtures shall be capable of producing and maintaining a uniform lighting level of 50-ft. candles at working surface height throughout the space. A lighting level of at least 20-ft. candles at foot level should be maintained in corridors providing ingress and egress to the City leased space. One to 10-ft. candles or minimum levels sufficient to ensure safety should be maintained in other nonworking areas. When the space is not in use by the City, interior and exterior lighting, except that essential for safety and security purposes, shall be turned off.

- a) Variable lighting shall be provided in class rooms. Dimmer control is sufficient.
- b) Building entrances, exits, and parking areas must be lighted. Lighting in these areas shall be controlled by electric eye. Ballasts are to be rapid-start, thermally-protected, voltage-regulating type, UL listed and ETL approved.
- c) Outdoor parking areas shall have a minimum of 1-ft. candle of illumination at the walking surface.
- d) Lighting must be switched so as to allow direct control of power for each office, hallway, or class room.
- e) Emergency lighting must provide at least .5-ft. candle of illumination throughout the exit path, including exit access routes, exit stairways, or other routes such as passageways to the outside of the building. The emergency lighting system used must be such that it will operate even if the

public utility power fails, except that in buildings six stories or less, the system may be powered from connections to separate substations or to a network system from the public utility. Automatic switching must be provided for the emergency power supply.

23. Switches and controls for lighting, heat, fire alarms, and all similar controls of frequent or essential use shall be placed no higher than 54-in. from the floor with 48-in. preferred. Switches shall be located on columns or walls by door openings.
24. In the event the structure has more than one rental space, separate utility meters must be provided and occupancy separation rating must comply with the Building Code of the City of El Paso; including mechanical, electrical and plumbing codes. The infrastructure for services, utilities, and maintenance shall be provided by the Lessor as part of the rental consideration. The Lessor must be available to promptly correct deficiencies. The Lessor shall ensure that utilities necessary for operation are provided. The Lessor shall provide separate metering as required for electrical/gas service and The City will be responsible for paying the monthly electrical/gas costs for the building (or that portion of the building leased by the City), for that service.
25. Maintenance Services and Testing of Systems
 - a) The Lessor is responsible for the total maintenance and repair of the leased premises. All equipment and systems shall be maintained to provide reliable, energy efficient service without unusual interruption, disturbing noises, exposure to fire or safety hazards, uncomfortable drafts, excessive air velocities, or unusual emissions of dirt. The Lessor's maintenance responsibility includes initial supply and replacement of all supplies, materials, and equipment necessary for such maintenance. Maintenance, testing, and inspection of appropriate equipment and systems must be done in accordance with applicable codes, and inspection certificates must be displayed as appropriate. Copies of all records in this regard shall be retained by the Lessor and provided to the City upon request. Without any additional charge, the City reserves the right to require the Lessor or his representative to test once a year, with proper notice, such systems as fire alarm, sprinkler, emergency generator, etc., to ensure proper operation. These tests shall be witnessed by a representative of the City.
 - b) Every Three Years: Paint all public and high traffic public areas. Includes moving and return of furniture.
 - c) Every Three Years: Paint all remaining interior walls. Includes moving and return of furniture.
 - d) Within 60 days after occupancy by the City, the Lessor shall provide the contracting officer with a detailed written schedule of all periodic services and maintenance to be performed other than daily, weekly, or monthly.
26. The Lessor shall furnish the City, prior to occupancy, written verification of the meter numbers and certification that these meters measure City usage only. Proration is not permissible.
27. Building shall meet all handicap accessibility requirements and shall comply with all applicable codes. Accessibility shall fully comply with ADA requirements. Access control mechanisms shall be mounted at ADA-compliant heights and shall be oriented for use and readability by a person who uses a wheelchair.
28. Building plans including: floor plan, mechanical, plumbing, and electrical drawing shall be presented for approval to the WIC Program Manager.

29. A written certification by a registered structural engineer may be required to certify that the building conforms to seismic requirements in accordance with the applicable (as of the date of construction of the proposed facility) edition of the Uniform Building Code (UBC) or National Building Code (NBC).
30. All entrances, exits, stairs, corridors, aisles, and passageways that may be used by the City shall comply with the ADA and the National Fire Protection Association (NFPA) Standard No. 101.
31. The Lessor's facility shall be equipped with intrusion alarms (windows, doors, and motion detectors) to prevent illegal entry or loitering in the space leased and to prevent unauthorized entry during off-duty hours. Wires from intrusion detection systems shall not be exposed to casual viewing. Reporting of the intrusion alarm system shall be to the local police department having jurisdiction. Telephone lines for this reporting shall be safeguarded as satisfactory to the City. Preventive maintenance shall be conducted annually and documentation provided to the City upon completion.
32. Safety And Fire Prevention

- a) Portable type fire extinguishers meeting requirements of NFPA Standard No. 10 shall be provided and maintained by the Lessor. Mounting heights, cabinet controls and accessibility (including weights) shall also comply with ADA.
- b) At least two smoke detectors shall be provided on each occupied (leased) floor. They shall be tested at least twice per year and maintained in good operating order by the Lessor. The detectors shall be placed so as to provide the best effective coverage of the floor space on each level. Engineered smoke control systems, if present, shall be maintained in accordance with the manufacturer's recommendations.
- c) Automatic sprinkler requirements are to be in compliance with local codes and ordinances.
- d) Alternative Fire Protection Features - If space cannot meet detailed safety and fire prevention requirements, alternative means of protection (an equivalent level of safety) will be considered. For example, if stairways are too narrow, automatic sprinkler protection throughout the building may make the space acceptable. All offerors must provide with their offer a written analysis from a registered fire protection engineer demonstrating that an equivalent level of safety for the offered building exists. This analysis must include certification by the engineer that the alternative protection will achieve a level of safety equal to or greater than that provided by automatic sprinkler systems. The certification must also include the engineer's seal and registration number. All analyses must be reviewed and approved by the City prior to leasing the space.
- e) Fire doors shall conform to NFPA Standard No. 80.

General:

- 1. The initial lease term should be for three years with the option to renew for three additional two (3) year options. All costs of renovations should be included in proposed cost and be fully amortized over the initial basic three years of the lease.
- 2. Lessor shall be responsible for all building maintenance and repair, including but not limited to heating, cooling, plumbing, and electrical. Lessor shall be responsible for maintenance of parking area.

Additionally, the Lessor shall repaint the building prior to occupancy and every three (3) years thereafter, for the entire term of the Lease, including the term for any options exercised by the Lessees.

3. Usable Space" is the actual space to be occupied by the City. It is determined as follows:
- a) If the space is on a single-tenancy floor, compute the inside gross area by measuring between the inside finish of permanent exterior building walls or from the face of convectors (pipes and other wall-hung fixtures) if the convector occupies at least 50 percent of the length of exterior walls. If the space is on a multiple-tenancy floor, measure from the exterior building walls as above and to the room side finish of fixed corridor and shaft walls and/or the center of tenant-separating partitions. In all measurements, make no deductions for columns and projections enclosing the structural elements of the building and deduct the following area from the gross area including their enclosing walls:
- Stairwells and restrooms,
 - Elevators and escalator shafts,
 - building equipment and service areas,
 - Entrance and elevator lobbies,
 - Stacks and shafts, and
 - Permanent corridors in place or required by local codes and ordinances and/or required by the City to provide an acceptable level of safety and/or to provide access to all essential building elements.

The right to use appurtenant areas and facilities is included.

4. In the event that the Leased Premises should become in need of repairs, Lessees shall give immediate notice thereof to Lessor; and Lessor agrees to arrange for maintenance personnel on a twenty-four hours basis. Repair shall be initiated and completed with all due speed and without delay. If repairs are not initiated by Lessor within twenty-four of notice of repairs which are essential to the health and safety of the Lessees, their agents, personnel or guests or essentials to the Lessees' use and occupancy of the Leased Premises, or if the repairs, which are not essential to the health and safety of the Lessees, their agents, personnel or guests or essentials to the Lessees' use and occupancy, are not initiated by the Lessor with ten (10) days of written notice for the need of other repairs, Lessees may at their option
- a) make or have such repairs, without liability to the Lessor for any loss or damage which may result to Lessor by reason of such repairs, the cost or expenses of which shall be presumed reasonable, and Lessor shall immediately, upon receiving evidence of such, cost and expense, pay for the cost and expenses of such repairs.
- b) Consider the Leased Premises untenable, in which case the term of this Lease shall be automatically extended, at no additional cost to the Lease, for the length of time it takes for repairs to be made or the Leased Premises are otherwise tenantable again. The lessee shall not be responsible for the payment of rent until the space is made tenantable. The Leased Premises shall be considered "untenable" when in the Lessees' sole discretion, the Leased Premises are not useable for the Lessees' permitted use under this Lease agreement: or there is a failure to initiate or complete repairs, and by default of any of the landlord responsibilities and the lessee is forced to pursue any and all legal remedies available to Lessees.

5. Evidence of Capability to Perform - Your offer shall include:

- a) Satisfactory evidence of at least a conditional commitment of funds in an amount necessary to prepare the space.
- b) The name of the proposed architect and engineering design firm and construction contractor/manager, if any, and evidence of their relative experience, competency, and performance capabilities with construction similar in scope to that which is required herein.
- c) The license or certification of the individual(s) and/or firm(s), providing architectural and engineering design services, if any, to practice in the state of Tennessee.
- d) A completed, signed copy of the attached City form entitled "Representations and Certifications - Lease of Real Property (Oct 2000).
- e) A completed copy of the attached Offer to Lease Space (Oct 2000). A completed copy of the attached GSA Form 1217, Lessor's Annual Cost Statement.
- f) Any exceptions taken to the provisions of the proposed draft lease documents (see IV below).
- g) The names and telephone numbers of persons authorized to conduct negotiations for your firm.

6. Preparation For Occupancy

- a) Within 10 days after award of the lease, the successful business concern shall submit to the City a schedule for occupancy of the office space. If building construction is required for the office space, the successful business concern shall submit a tentative design and construction schedule providing the dates on which the various phases of the project's construction or build-out, if required, will be completed to coincide with the proposed schedule as submitted in the proposal. The finalized schedule is to be submitted no later than 20 days after award.
- b) Construction inspections will be made periodically by the City to review compliance with the solicitation requirements and the final working drawings.
- c) The City will not take occupancy of the facility until a Certificate of Occupancy is issued by the appropriate local authority holding jurisdiction in the pertinent geographic area. Receipt of Certificate of Occupancy does not relieve Lessor from meeting the requirements specified under Article X. REQUIREMENTS.
- d) During new construction or new improvements to the space, rent will commence once City has inspected and sent written confirmation of the acceptance of the leased premises. Confirmation letter will not be unreasonably withheld.
- e) Space offered must have a current occupancy permit issued by the local jurisdiction. Prior to occupancy, the Lessor shall furnish, at no cost to the City, a certification bearing the seal of a registered architect/engineer(s), licensed to practice in the state of Texas, that the building and its systems, as designed and constructed, will satisfy the requirements of this lease and all applicable federal, state, and local building codes, fire codes, life safety codes, and accessibility

codes in the municipality where the facility was constructed. The above seal will also indicate that the site and building design will also conform to the Technical Requirements of the Americans with Disabilities Act (ADA), entitled the Americans with Disabilities Act Accessibility Guidelines (ADAAG). This will include accessibility to the site (including distributed accessible parking and accessible routes to building entrances), building entrances, access to common-use areas such as lobbies, corridors, meeting rooms, libraries or resource rooms, public telephones and water fountains, vending and break areas, and fully accessible rest rooms.

If the local jurisdiction does not issue occupancy permits, Offerors should consult the City to determine if other documentation may be needed. Equipment, services, or utilities furnished and activities or other occupants shall be free of safety, health, and fire hazards and from accessibility obstructions. When hazards or obstructions are detected, they must be promptly corrected at the Lessor's expense.

7. Janitorial Services

- a) City will provide Janitorial Services within the leased space.
- b) As Required: Lessor will properly maintain plants and lawns, remove snow and ice from entrances, exterior walks, and parking lots of the building. Provide initial supply, and installation. Replace worn floor coverings (this includes moving and return of furniture). Exterminate pests.
- c) Landscape Maintenance - Performance will be based on the City's evaluation of results and not the frequency or the method of performance. Landscape maintenance is to be performed during the growing season on a weekly cycle and will consist of watering, mowing, and policing area to keep it free of debris. Pruning and fertilization are to be done on an as-needed basis. In addition, dead or dying plants are to be replaced.

8. Building Operating Plan - The City shall have control over all start-up and shut-down times for operation of each building system, such as lighting, heating, cooling, ventilation, and plumbing, which is necessary for the operation of the building.

4.1 Proposal Format and Structure

All submissions must follow the submission guidelines below. The City reserves the right to reject proposals not in compliance with these requirements.

1. Use fonts no smaller than Times New Roman, 10 point. Maximum length including title page, the entire proposal, and appendices should not exceed 100 pages but may be required in some instances.
2. All pages must be numbered.
3. Address qualifications criteria in the order presented in PART 5 – PROPOSAL EVALUATION. Your proposal should be concise, specific, and complete and should demonstrate a thorough understanding of the minimum requirements.
4. Major sections must have page breaks between them and the following sections.

5. The proposal must be signed and titled by a duly authorized representative/official of the Offeror to bind your firm contractually and must be accompanied by a statement to the effect that your offer is firm for a period of not less than 60 calendar days after the closing date for receipt of offers.

In addition, the City requires that all proposals contain the following:

6. Title Page – Clearly label with the RFP number, RFP title, Offeror's name, mailing address, and fax number, and the name, telephone number, and email address of a contact person.
7. Table of Contents – Identify the page location of each major section.
8. Introduction – Provide the name of the Owner as shown in the property's deed, the name of the person leasing, managing or operating the property, including property management company, if any, background and general qualifications of the property management and operations contact, including any experience with leases similar in scope and/or size to the leased real property requested in this RFP.
9. Offeror's Proposal – Include all pages from this Request for Proposals in addition to any other materials submitted by the Offeror. State in succinct terms the Offeror's understanding of the office space required and services to be provided to Tenant and how the Offeror will meet the lease specifications as delineated within Part 3 Scope of Work.
10. Contract Clauses and Forms – Include all pages and completed forms. In addition to the above information, describe any prior or pending litigation, civil or criminal, involving a governmental agency or which may affect the lease of the real property. This includes any instances in which the Offeror or any of its employees, agents, subcontractors, or sub-consultants such as lease management operator or company is or has been involved within the last three years.
11. Client list – for historical purposes, please provide the name and addresses of within the last five years.
12. Response must demonstrate your comprehension of the objectives and services from the RFP. Do not merely duplicate the Scope of Work as presented within this RFP.
13. Appendices – include any additional information that the Offeror deems important to the decision process but that is not specified elsewhere in the RFP.
14. Identify by name and title the individual responsible for the real property management and operations. (That is, the individual who has the responsibility to oversee the contract, not a firm's contract negotiator, etc.)
15. Identify the property management and staffing. An organizational chart, if applicable, should be provided, along with resumes of the principal personnel assigned to the property leasing, management or operations of the leased real property. Proposals must describe the work to be performed by the principal individuals and detail their qualifications and experience directly related to this RFP. A response prepared specifically for this RFP is required, focusing on individual's specific duties and responsibilities and experience that is relevant to the requirements of this RFP.
16. A list of references that can be contacted to discuss the property leasing and management of real properties similar in size, scope and complexity of the lease of real property

References that are not relevant to RFP should not be included. Therefore, the References provided should be directly related to the specifications and the proposal requirements in this RFP. The City is particularly interested in any government references regarding real property leased to such governmental entities. The City may obtain other information by sending out questionnaires and/or through other sources. References other than those identified by the Offeror may be contacted by the City with the information received used in the evaluation.

The Offeror shall provide references from at least three office lease contracts, within the last three years that are similar in size, scope and complexity to Part 1 –Lease of Real Property.

17. Additional Information.

Offerors are asked not to include loose brochures (e.g. general marketing material). Brochure material will not be considered for review. Only pertinent information should be submitted.

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete offer are not desired. Legibility, clarity, and completeness are much more important.

4.2.1 Copies Required

Paper – One (1) complete, original copy (signed in blue ink where required) and **Five (5) copies**, both contained in a single sealed submission. All responses shall contain those pages on which prices, other information, or signatures are required.

Electronic – One (1) electronic copy on a CD-ROM or flash drive. Format of the electronic copy must be either .doc (readable by Microsoft Word 2007 or 2010) or .pdf (readable by Adobe Reader 9). The content of the electronic file shall be an exact submission of the hard copies of the proposals (i.e., documents should bear signatures, where applicable and be filled out entirely). In event of discrepancy/conflict between the hard copy and electronic copy, the hard copy will govern.

4.2 Proposal Term of Contract

The initial term of this contract shall be for **three (3) years** with the option to extend the term of the contract for up to two (2) additional terms of three (3) years each. The total contract period shall not exceed nine (9) years from the City of El Paso RFP #2016-419R effective date of the Contract. The City Manager or designee may extend the option to extend.

4.3 Proposal Cost

Offerors should include the rental amount by square foot, total amount of square feet of proposed lease space, and total rent by month, year and lease term. In the event of a conflict, the amount shown as the Price per Square Foot shall prevail. Assumptions made by the Offerors about the needs, functions and/or requirements of the City, outside of those contained in this solicitation or provided to Offerors subsequent to the issuance of this solicitation, and used to calculate costs should be clearly noted in the response. You must include your firm, fixed price for lease of space by completing the Offer to Lease Space form, Lessor's Annual Cost Statement and the Unit Costs for Adjustments form.

Bid Form

Group 1: George Dieter Area ([79936] within 5 miles of [1757 George Dieter Dr. Ste. #109])

| Item No. | Description | Price Per Square Foot | Total Square Feet | Monthly Total Rental (Price per Square foot X Total Square Feet) | Annual Total (Monthly Total Rental X 12 Months) | 3-Year Total (Annual Total X 3 Years) |
|---|---|-----------------------|-------------------|---|--|--|
| 1. | <u>Initial Three (3) Year Lease</u> | Price per/sqft. | Total sqft. | \$ (Price per Square foot X Total Square Feet) | \$ (Monthly Total Rental X 12 Months) | \$ (Annual Total X 3 Years) |
| 2. | <u>Discounted rent for Construction Period (if any) during Initial 3 Year lease</u> | Price per/sqft. | Total sqft | \$ (Price per Square foot X Total Square Feet) | \$ (Monthly Total Rental X 12 Months) | \$ (Annual Total X 3 Years) |
| 3. | <u>First Extension Option: Additional Three (3) year period</u> | Price per/sqft. | Total sqft. | \$ (Price per Square foot X Total Square Feet) | \$ (Monthly Total Rental X 12 Months) | \$ (Annual Total X 3 Years) |
| 4. | <u>Second Extension Option: Additional Three (3) year period</u> | Price per/sqft. | Total sqft. | \$ (Price per Square foot X Total Square Feet) | \$ (Monthly Total Rental X 12 Months) | \$ (Annual Total X 3 Years) |
| 5. | <u>Third Extension Option: Additional Three (3) year period</u> | Price per/sqft. | Total sqft. | \$ (Price per Square foot X Total Square Feet) | \$ (Monthly Total Rental X 12 Months) | \$ (Annual Total X 3 Years) |
| Grand Total for Group 1 Items 1-5: | | | | | \$ | (Estimated 9 Years Total) |

Group 2: Lee Trevino ([79936] within 5 miles of [1840 Lee Trevino Dr. Ste 201])

| Item No. | Description | Price Per Square Foot | Total Square Feet | Monthly Total Rental (Price per Square foot X Total Square Feet) | Annual Total (Monthly Total Rental X 12 Months) | 3-Year Total (Annual Total X 3 Years) |
|---|---|-----------------------|-------------------|---|--|--|
| 1. | <u>Initial Three (3) Year Lease</u> | Price per/sqft. | Total sqft. | \$ (Price per Square foot X Total Square Feet) | \$ (Monthly Total Rental X 12 Months) | \$ (Annual Total X 3 Years) |
| 2. | <u>Discounted rent for Construction Period (if any) during Initial 3 Year lease</u> | Price per/sqft. | Total sqft. | \$ (Price per Square foot X Total Square Feet) | \$ (Monthly Total Rental X 12 Months) | \$ (Annual Total X 3 Years) |
| 3. | <u>First Extension Option: Additional Three (3) year period</u> | Price per/sqft. | Total sqft. | \$ (Price per Square foot X Total Square Feet) | \$ (Monthly Total Rental X 12 Months) | \$ (Annual Total X 3 Years) |
| 4. | <u>Second Extension Option: Additional Three (3) year period</u> | Price per/sqft. | Total sqft. | \$ (Price per Square foot X Total Square Feet) | \$ (Monthly Total Rental X 12 Months) | \$ (Annual Total X 3 Years) |
| 5. | <u>Third Extension Option: Additional Three (3) year period</u> | Price per/sqft. | Total sqft. | \$ (Price per Square foot X Total Square Feet) | \$ (Monthly Total Rental X 12 Months) | \$ (Annual Total X 3 Years) |
| Grand Total for Group 2 Items 1-5: | | | | | \$ | (Estimated 9 Years Total) |

4.3.2 PAYMENT TERMS & CONDITIONS

NOTE: All Offerors must accept an ACH payment effective immediately upon the award of the Lease Contract for the office space. Offerors must fill-out the attached Accounts Payable Direct Deposit Sign-Up Form located in Part 6 of this document to facilitate the Automated Clearing House (ACH) payment process.

Lease Contract Payments

All Lease Contract payments shall be made in accordance with the Contract’s invoice payment terms. The City of El Paso will make no advance payments for the lease of property that is subject of this RFP, unless otherwise noted in the terms and conditions of the attached Form of Contract. Invoices may be submitted on no more than a monthly basis. Invoices submitted for lease payments shall be forwarded to:

With copy to:
Accounts Payable
City of El Paso Department of Public Health
ATTN: Accounts Payable
5115 El Paso Dr.
El Paso, TX 79905

Prompt Payment:

Unless a prompt payment discount is offered and accepted by the City of El Paso, payments will be made to the Contractor within thirty (30) days following receipt by the City of a properly prepared invoice. Any discount for prompt payment will be calculated from the day when a properly prepared invoice is received. Payments will be considered to have been made on the date of mailing (postmark) of the payment check or, for an electronic funds transfer, the specified payment date. Invoices are to be submitted in single copy to the Department of Public Health, ATTN: Accounts Payable, 5115 El Paso Drive, El Paso, TX 79905

Payment Terms: Please mark appropriate block.

- _____ % - 10 Days
- _____ % - 20 Days
- _____ % - 30 Days
- Net - 30 Days

Late Payment fees will incur at the State of Texas statutory rate.

4.3.3 FEDERAL MINIMUM WAGE

The current Federal minimum wage shall be required by the City of El Paso for any contracts requiring an hourly wage rate as part of the bid. In such cases, the awarded offeror’s employees shall be paid, at a minimum, the federally mandated minimum wage and the awarded offeror shall be required to submit certified payrolls, when requested, to verify the wage rate requirement.

If the federally mandated minimum wage is increased during the term of this contract, Contractor may submit a written request for a price adjustment. The City will consider an adjustment only to the extent shown by the Contractor to be necessary to meet increased federal requirements for minimum wage employees for additional services (but not monthly rental payments) if included in the bid.

PART 5 - PROPOSAL EVALUATION

5.1 Evaluation Factors

The proposal evaluation process is designed to award the lease contract, not necessarily to the Respondent of least cost, but rather to the Respondent with the best combination of attributes for the leased real property (i.e., location, rental amount, amenities, qualifications and experience of property management and operations, etc.) based upon the evaluation factors specifically established for this RFP.

Respondents must provide all information outlined in the Evaluation Factors to be considered responsive. Proposals will be evaluated based on the responsiveness of the Respondent's information to the Evaluation Factors which will demonstrate the Respondent's understanding of the Evaluation Factors and capacity to provide the leased real property for the City's purpose in response to this Request for Proposals.

Proposals will be evaluated based on the following Evaluation Factors:

| EVALUATION FACTORS | MAXIMUM POINTS |
|---------------------------|-------------------|
| A. Rental Price | 30 Points |
| B. Location | 30 Points |
| C. Technical Approach | 20 Points |
| D. Schedule for Occupancy | 20 Points |
| TOTAL | 100 Points |

The establishment, application and interpretation of the above Evaluation Factors shall be solely within the discretion of The City of El Paso ("the City"). The City reserves the right to determine the suitability of proposals on the basis of all these factors.

5.2 Evaluation Factor Description

The maximum points that shall be awarded for each of the Evaluation Factors are detailed and described below.

A. All offers must meet the requirements as set forth in the request for proposal.

B. In addition, the following criteria will be numerically weighted and scored as part of the evaluation:

EVALUATION FACTOR A

Rental Price (Bid Form – Section A)

30 Points

Provide detailed information on rental prices submitted

- A. Using criteria listed below, a competitive range will be established. For those offers remaining in the competitive range after the technical evaluation, the total proposed price for the first term of three years and the three option periods for the minimum amount of office space and the optional office space will be weighted and scored. The lowest total price for an otherwise acceptable technical offer will receive the maximum points for this criterion. The remaining offers will receive a percentage of

the available points based upon the ratio of the total price of the lowest offered price to the total price of the respective offer being ranked.

- B. You must include your firm, fixed price for lease of space by completing the Offer to Lease Space form, Lessor’s Annual Cost Statement and the Unit Costs for Adjustments form.

EVALUATION FACTOR B

Location

30 Points

Area within 5 miles of [current site location]. A site plan identifying the address and the location and orientation of the facility on the required site must be provided. (If [current site location] address and location are within range a total of 30 points will be received; if not within 5 miles of current site, zero points will be received.

Current Site Locations

- George Dieter Area ([79936] within 5 miles of [1757 George Dieter Dr., Suite109])
- Lee Trevino ([79936] within 5 miles of [1840 Lee Trevino Dr. Ste 201])

EVALUATION FACTOR C

Technical Approach

20 Points

Approach to meeting the following concepts which are to be incorporated into the facility design:

| | |
|--|------------------|
| <p>A. Individual building functionality and responsiveness to the requirements including technical and performance specifications and design considerations to provide an aesthetically pleasing interior and exterior appearance. Quality of materials for finished surfaces which will result in low maintenance. The proposed facility will be assessed as too its functionality as Class A office space and effective space conducive for multi-program research and development. Type of construction and efficiency of the arrangement proposed for office space. Approach and plans for parking with effective site ingress and egress.</p> | <p>10 points</p> |
| <p>B. Plans for mechanical and electrical systems which are energy efficient.</p> | <p>5 points</p> |
| <p>C. Sketches or drawings must be provided which show the functional arrangements of the required space. As a minimum, proposals must include one-eighth (preferred) or larger scale of the proposed floor plan of the proposed building. Plans or drawings must include dimensions and plans for functional space; specific identification of usable square footage proposed; windows; hallways; restrooms; entrances; elevators (if required); parking, including designated accessible routes from the parking area to main building entrance(s); electrical power availability, and heating, ventilation, and air conditioning including a building utilities operating plan.</p> | <p>5 points</p> |

EVALUATION FACTOR D

Schedule for Occupancy

20 Points

A. This section shall include the proposed schedule adequately identifying tasks or work elements from the execution of a lease through completion or alterations of the building for occupancy. Submit and describe the work plan to begin “Schedule of Occupancy” once the lease is awarded. What is the plan to implement the work plan to accomplish the contract requirements? The schedule shall include

sufficient detail and milestone definition for the City's evaluation. The proposal shall provide the best possible schedule in days from execution of the lease.

Are all phases of the schedule for preparing the facility for occupancy included in the offer? Is the proposed schedule credible and realistic? Does the contractor/developer exhibit adequate evidence of his ability to meet the proposed schedule? Is this the best possible schedule in days from execution of the lease agreement? Occupancy of office space is requested on the earliest date possible.

| Schedule of Occupancy | Points | Please place a check mark on the proposed schedule |
|--|---------------|---|
| <ul style="list-style-type: none"> if facility is available within 90 days from Bid approval | 20 points | |
| <ul style="list-style-type: none"> if facility is available within 120 days from bid approval | 15 points | |
| <ul style="list-style-type: none"> if facility is available within 150 days from bid approval | 10 points | |
| <ul style="list-style-type: none"> if facility is available within 180 days from bid approval | 5 points | |
| <ul style="list-style-type: none"> if facility is available after 181 days from Bid approval | 0 points | |

B. We reserve the right to solicit from any available sources relevant information concerning your business operations and to use this information in evaluation and selection.

Maximum Total Possible Points

100 Points

5.3 Evaluation and Award Process-General Information

- A. All offers are subject to the terms and conditions of this solicitation. Material exceptions to the terms and conditions, or failure to meet the City's minimum specifications, shall render the offer non-responsive to the solicitation.
- B. Any award made under this solicitation shall be made to the Offeror who provides the leased office space that is determined to be the most advantageous to the City. Factors to be considered in determining the proposal most advantageous to the City are included above.
- C. Prompt payment discounts will be considered when determining the apparent lowest offer, providing the City is allowed at least ten (10) days in which to take advantage of the discount.

5.3.1 Evaluation and Award Process

As part of the requirement to establish the responsibility of the Offeror, the City of El Paso may perform a comparability analysis to determine the reasonableness of the price(s) at which the office space is offered. Prices that are significantly higher than the mean of all offers and that appear to be unreasonably high may be determined to be evidence of non-responsibility, and cause the Offer to be rejected.

- A. The Evaluation Committee shall be established to evaluate proposals based solely on the Evaluation Factors set forth above. Factors not specified in the RFP will not be considered. The City reserves the right to waive any minor irregularities or technicalities in the proposals received. Proposals will be evaluated on an individual basis against the requirements stated in the RFP.
- B. Minor problems of completeness or compliance may be called to the attention of Offerors for clarification. Substantial deviations from specifications or other requirements of this RFP will result in disqualification of the proposal.
- C. Rental Price will not be the only consideration in the selection of short listed proposals. Detailed evaluation of proposals will involve a determination of the most favorable combination of various elements contained in this RFP. The selection of the ultimate winning proposal will be based upon what the evaluators believe to be most advantageous to the City.
- D. During the evaluation process, the City reserves the right, where it may serve in the City's best interest, to request additional information or clarifications from Offerors, or to allow corrections of errors or omissions.
- E. After evaluations, the Evaluation Committee may determine a short list also known as competitive range. The short list/competitive range include the proposals that have a reasonable chance of being selected for award considering all aspects of the RFP. The City may request Best and Final Offers (BAFO) and negotiate with the Respondent(s) who fall within the short list/competitive range. If required, only those Respondents within the short list/competitive range may be selected for an oral presentation and/or interview.
- F. The presentation/interview process will be arranged by the Evaluation Committee for purposes of discussion and/or clarification. Points may be deducted or added to the Respondent's preliminary score as deemed necessary by the Evaluation Committee.
- G. The City reserves the right to negotiate the final specifications, price, schedule, and any and all aspects of this solicitation with all Respondents in the competitive range. Once negotiations are complete, the City shall establish a common date and time for the submission of Best and Final Offers. If a Respondent does not submit a notice of withdrawal of its offer, or a Best and Final Offer, the Respondent's immediate previous offer shall be construed as its best and final offer.
- H. The best and final offers shall be evaluated in essentially the same manner as the initial offers. The lease contract shall be awarded to the responsible Respondent whose qualifications, price, schedule and other factors considered, are the most advantageous to the City.
- I. The City reserves the right to award this lease contract to one Respondent, to make multiple awards and to award without discussions. The city may reject any or all offers if such action is in the City's interest, award contract other than to the lowest respondent, waive informalities and minor irregularities in offers received, and award all or part of the requirements stated.

- J. Proposals that are considered non-responsive will not receive consideration. The City reserves the right at any time during the evaluation process to reconsider any proposal submitted. It also reserves the right to meet with any Respondent at any time to gather additional information. Furthermore, the City reserves the right to delete, add or modify any aspect of this procurement through competitive negotiations up until the final lease contract signing.
- K. The successful Offeror's proposal will be incorporated into the final lease contract. Any false or misleading statements found in the proposal will be grounds for disqualification or contract termination. Submission of a proposal indicates acceptance by the Offeror of the conditions contained in this RFP, unless clearly and specifically noted in the proposal and confirmed in the lease contract between the City and the Offeror selected.

PART 6 - MANDATORY SUBMITTALS

- 6.1 Business Information Certification
- 6.2 Non-Collusion and Business Disclosure Affidavit
- 6.3 Indebtedness Affidavit
- 6.4 Direct Deposit Sign-up Form

Attachment "A" – LEASE CONTRACT CLAUSES

Responsibility Determination

The City, at its option, may request additional information from the Offeror regarding the financial responsibility of the Offeror and the determination regarding the Offeror's financial responsibility would include consideration of a Respondent's integrity, compliance with public policy, past performance with the City (if any), financial capacity and eligibility to perform pursuant the government specifications (e.g., debarments/suspension from any Federal, State, or local government). The City reserves the right to perform whatever research it deems appropriate in order to access the merits of any Respondent's proposal.

A. Financial Capacity Determination

FINANCIAL INFORMATION

Financial Statements. Please provide financial statements for your organization for at least the last two (2) fiscal years as follows:

If a **publicly** held organization:

- (1) Consolidated financial statements as submitted to the Securities and Exchange Commission (SEC) on Form 10K.
- (2) The most recent Forms 100 since the last Form 10K was submitted.
- (3) Any Form 8K's in your last fiscal year.

If a **privately** held organization:

- (1) Balance sheet for your last two fiscal years certified by an independent Certified Public Accountant.
- (2) Statement of income of your last two fiscal years certified by an independent Certified Public Accountant.

Management discussion and analysis of your organization's financial condition for the last two years indicating any changes in your financial position since the certified statements were prepared.

If not considered proprietary, any recent Management Letters.

Evidence of Financial Responsibility.

Submit evidence of financial responsibility. This may be a credit rating from a qualified firm preparing credit rating or a bank reference.

The City reserves the right to confirm and request clarification of all financial information provided (including requesting audited financial statements certified by an independent Certified Public Accountant), or to request documentation of the Offeror's ability to comply with all of the requirements in the Proposal Documents.

Incomplete disclosures may result in a proposal being deemed non-responsive.

Note: Dun & Bradstreet has the capability to obtain information on past performance on specific contractors. Accordingly, the City may require Offerors to provide a copy of a recent past performance report prepared by Dun & Bradstreet. The Past Performance Evaluation Report provided to the Offeror by Dun & Bradstreet shall be submitted, not later than 14 calendar days after request by the City. The Offeror shall be responsible for the cost of Dun & Bradstreet's preparation of the report.

B. Technical Capacity Determination

The City may conduct a survey relating to the Respondent's record of performance on past and present property leases and contracts that are similar in scope to the specifications identified in this RFP, which may include real properties not identified by the Respondent. The City reserves the right to perform whatever research it deems appropriate in order to assess the merits of any Respondent's proposal. Such research may include, but not necessarily be limited to, discussions with outside respondents, interviews and site visits with the Offeror's existing tenants, clients and analysis of industry or real property reports. The City will make a finding of the Respondent's Technical Resources/Ability to perform the RFP specifications based upon the results of the survey.

A Offeror will be determined responsible if the City determines that the results of the Technical Resources/Ability survey reflect that the Offeror is capable of undertaking and completing the RFP specifications in a satisfactory manner.



6.1 Business Information Certification

SECTION D FORMS

BUSINESS INFORMATION CERTIFICATION

Mark all that apply.

- | | |
|---|--|
| <input type="checkbox"/> Manufacturer or Producer | <input type="checkbox"/> Disadvantaged Business Enterprise |
| <input type="checkbox"/> Wholesaler | <input type="checkbox"/> Asian - Pacific American |
| <input type="checkbox"/> Retailer | <input type="checkbox"/> Black American |
| <input type="checkbox"/> Franchised Distributor | <input type="checkbox"/> Hispanic American |
| <input type="checkbox"/> Factory Representative | <input type="checkbox"/> Native American |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> <input type="checkbox"/> Woman Owned Business |
| <input type="checkbox"/> Large Business | <input type="checkbox"/> Handicapped |
| <input type="checkbox"/> Small Business | <input type="checkbox"/> Local Business Enterprise |
| | <input type="checkbox"/> HUB State Certified Historically Underutilized Business (please furnish copy of Certification) |

SMALL BUSINESS CONCERN: Less than \$1,000,000.00 in annual receipts or fewer than one hundred [100] full time employees.

DISADVANTAGED BUSINESS ENTERPRISE: At least fifty-one percent [51%] owned by one or more socially disadvantaged individuals, or a publicly held corporation with at least fifty-one percent [51%] of the stock owned by one or more such individuals.

WOMAN-OWNED BUSINESS: At least fifty-one percent [51%] owned by a woman, or women, who also control and operate the business. "Control" in this context means making policy decisions. "Operate" in this context means actively carrying on day to day management

HANDICAPPED: At least fifty-one percent [51%] owned by a person or persons with an orthopedic, otic [hearing], optic [visual], or mental impairment which substantially limits one or more of their major life activities.

LOCAL BUSINESS: A business with a Tier 1 or Tier 2 principal place of business within in incorporated city limits of El Paso, Texas.

HUB [HISTORICALLY UNDERUTILIZED BUSINESS]: A Business Enterprise, which has been granted a Certificate by the State of Texas, as a Historically Underutilized Business. The City of El Paso utilizes information on Historically Underutilized Businesses (HUB), from the State of Texas Comptroller of Public Accounts (CPA), HUB Program, 1711 San Jacinto Ave, P.O. Box 13186, Austin, Texas 78711. The City encourages you to contact the State if you feel you may qualify.

I certify that the foregoing information is a full, true and correct statement of the facts.

Signature of Person Authorized to Sign Application

Title

Date



City Of El Paso
Purchasing & Strategic Sourcing Department

6.2 Non-Collusion and Business Disclosure Affidavit

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned official, on this day, personally appeared _____, a person known to me to be the person whose signature appears below; whom after being duly sworn upon his/her oath deposed and said:

1. I am over the age of 18, have never been convicted of a crime and am competent to make this affidavit.
2. I am a duly authorized representative of the following company or firm (the "Offeror") which is submitting a response to 2016-419R, WIC CLINIC LEASE OF REAL PROPERTY – PUBLIC HEALTH:

_____ (Name of Offeror).

3. **BY SUBMITTING THIS BID, I CERTIFY THAT OFFEROR AND ITS AGENTS, OFFICERS OR EMPLOYERS HAVE NOT DIRECTLY OR INDIRECTLY ENTERED INTO ANY AGREEMENTS, PARTICIPATED IN ANY COLLUSION, OR OTHERWISE TAKEN ANY ACTION IN RESTRAINT OF FREE COMPETITIVE BIDDING IN CONNECTION WITH THIS PROPOSAL OR WITH ANY CITY OFFICIAL.**

4. I have listed in **Paragraph 10** below all the names the Offeror uses and has used in the past and certify that I have disclosed all such names, including any assumed (DBA) names.

5. **Certificate of Organization.** In completing this Affidavit, I have attached a copy of the organization certificate issued by the Secretary of State of the state in which the company was organized (i.e. Certificate of Formation, Certificate of Good Standing, Statement of Operation or Registration and/or a copy of Assumed Name Certificate if the Offeror/Offeror used a trade name in the Solicitation documents is other than the name under which company was organized).

6. **Material Change in Organization or Operation.** *Except as described in **Paragraph 10** below*, I certify that Offeror is not currently engaged nor does it anticipate that it will engage in any negotiation or activity that will result in the merger, transfer of organization, management reorganization or departure of key personnel within the next twelve (12) months that may affect the Offeror's ability to carry out the contract with the City of El Paso.

7. **Debarment/Suspension.** *Except as described in **Paragraph 10** below*, I certify that Offeror and its subcontractors, officers or agents are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any covered transactions by any federal, state or local department or agency. If such an event has occurred, state in **Paragraph 10** below, the reason for or the circumstances surrounding the debarment or suspension, including but, not limited to, the name of the governmental entity, the period of time for such debarment or suspension and provide the name and current phone number of a governmental contact person familiar with the debarment or suspension.

I understand the Offeror is obligated to immediately inform the City in the event that the Offeror is included in such a debarment/suspension list during the performance of this Contract with the City of El Paso.

8. **Default/Termination of Contracts.** *Except as described in **Paragraph 10** below*, I certify that, within the last 24 months, there are no Contract(s) between the Offeror and a governmental entity that have been terminated, with or without the Offeror's default. If such a contract has been terminated within the last 24 months, state in **Paragraph 10** below the reason for or circumstances surrounding the termination.

9. **Taxpayer Identification.** In completing this Affidavit, I have also attached a copy of a completed Form W-9 that shows the Offeror's taxpayer identification number (Employer Identification Number or Social Security Number). I understand that failure to provide this information may require the City to withhold 20% of payments due under the contract and pay that amount directly to the IRS.

10. Additional Information (state the number of paragraph above which corresponds to the information provided)

(Attach additional pages if needed)

Attached are the following:

Certificate of Organization (required by Paragraph 5)

Taxpayer Identification (required by Paragraph 9)

I understand that by providing false information on this Affidavit, I could be found guilty of a Class A misdemeanor or state jail felony under the Texas Penal Code, Section 37110. In addition, by providing false information on this Affidavit, the Offeror it could be considered not responsible on this and future solicitations, and such determination could result in the discontinuation of any/all business or contracts with the Offeror by the City of El Paso.

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 20_____.

Signature

Notary Public

Printed Name

Commission Expires

(Rev. Sept. 2009)



**City Of El Paso
PURCHASING & STRATEGIC SOURCING DEPARTMENT**

6.3 Indebtedness Affidavit

THIS IS AN OFFICIAL PURCHASING DOCUMENT – RETAIN WITH PURCHASE ORDER FILE

Before me, the undersigned authority, on this day personally appeared _____ [FULL NAME] (hereafter “*Affiant*”), a person known to me to be the person whose signature appears below, whom after being duly sworn upon his/her oath deposed stated as follows:

- Affiant is authorized and competent to give this affidavit and has personal knowledge of the facts and matters herein stated.
- Affiant is an authorized representative of the following company or firm: _____ [Contracting Entity’s Corporate or Legal Name] (hereafter, “*Contracting Entity*”).
- Affiant is submitting this affidavit in response to the following bid: *Solicitation No. 2016-419R, WIC CLINIC LEASE OF REAL PROPERTY – PUBLIC HEALTH*, which is expected to be in an amount that exceeds \$50,000.00.
- Contracting Entity is organized as a business entity as noted below (check box as applicable):

For Profit Entity (select below):

- Sole Proprietorship
- Corporation
- Partnership
- Limited Partnership
- Joint Venture
- Limited Liability Company
- Other (Specify type in space provided below):

For Non-Profit Entity or Other (select below):

- Non-Profit Corporation
- Unincorporated Association

- The information shown below is true and correct for the Contracting Entity. If Contracting Entity is a sole proprietorship or partnership, list all owners of 5% or more of the Contracting Entity. Where the Contracting Entity is an unincorporated association, the required information has been shown for each officer. [Note: In all cases, use FULL name, business and residence addresses and telephone numbers.]

Contracting Entity:

| | |
|----------------------------------|--|
| Name | |
| Business Address [No./Street] | |
| City/State/Zip Code | |
| Telephone Number | |
| Resident Address (if applicable) | |
| City/State/Zip Code | |
| Telephone Number | |
| Federal Tax ID Number | |
| Texas Sales Tax Number | |

5% Owner(s) or Officers of Unincorporated Association ** (If none, state "None"):

| | |
|----------------------------------|--|
| Name | |
| Business Address [No./Street] | |
| City/State/Zip Code | |
| Telephone Number | |
| Resident Address (if applicable) | |
| City/State/Zip Code | |
| Telephone Number | |

**Attach additional pages if necessary to supply the required names and addresses.

- Affiant understands that in accordance with Ordinance No. 016529 of the City of El Paso (the “City”), the City may refuse to award a contract to or enter into a transaction with Contracting Entity that is an apparent low bidder or successful proposer that is indebted to the City.
- Affiant understands that the term “*Debt*” shall mean any sum of money, which is owed to the City by a Contracting Entity, Owner, or Vendor, that exceeds one hundred dollars (\$100.00) and that has become Delinquent, as defined hereinafter. Such Debt shall include but not be limited to: (i) property taxes; (ii) hotel/motel occupancy taxes; and (iii) license and permit fees.
- Affiant understands that the term “*Delinquent*” shall mean any unpaid Debt that is past due for sixty (60) days or more and, which is not currently subject to challenge, protest, or appeal.
- Affiant represents that to the best of its knowledge, the Contracting Entity is not indebted to the City in any amounts as described in Item No. 7 above, as of the date of the submittal. If the Contracting Entity is indebted to the City, the following represents the type and estimated amount of indebtedness:

- If the Contracting Entity is indebted to the City, describe any payment arrangements that have been entered into to settle the Debt.

- In the event that the City refuses to do business with a Contracting Entity due to any indebtedness listed above or as determined by the City Financial Services Department, the Contracting Agency may appeal this determination in accordance with the appeal regulations in Ordinance 016529.

Affiant certifies that he is duly authorized to submit the above information on behalf of the Contracting Entity, that Affiant is associated with the Contracting Entity in the capacity noted above and has personal knowledge of the accuracy of the information provided herein; and that the information provided herein is true and correct to the best of Affiant’s knowledge and belief. Affiant understands that providing false information on this form shall be grounds for debarment and discontinuation of any/all business with the City of El Paso.

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 20____.

Signature

Notary Public

Printed Name

Commission Expires

6.4 Conflict of Interest

| CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity | | FORM CIQ |
|--|---|-----------------|
| <p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p> | OFFICE USE ONLY Date Received | |
| <p>1 Name of person who has a business relationship with local governmental entity.</p> | | |
| <p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p>(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p> | | |
| <p>3 Name of local government officer with whom filer has employment or business relationship.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p> <p>This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p> | | |
| <p>4</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature of person doing business with the governmental entity</p> <p style="text-align: right; margin-right: 150px;">_____</p> <p style="text-align: right; margin-right: 150px;">Date</p> | | |

Adopted 06/29/2007

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.

| 4 Name of Interested Party | City, State, Country (place of business) | Nature of Interest (check applicable) | |
|-------------------------------|---|---------------------------------------|--------------|
| | | Controlling | Intermediary |
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5 Check only if there is NO Interested Party.

6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.

 Signature of officer administering oath

 Printed name of officer administering oath

 Title of officer administering oath

ADD ADDITIONAL PAGES AS NECESSARY

6.5 Vendor Information Form

CITY OF EL PASO PURCHASING DEPARTMENT
VENDOR INFORMATION FORM

This form must be accompanied by an IRS Form W-9 and Conflict of Interest Questionnaire.

Add Update Inactivate Vendor Contractual Employee City of El Paso Employee

Send To: Suky Flores, Sr. Office Asst. - Purchasing Telephone #: 915-541-4179 Fax #: 915-541-4347

From: Name: City Department: Tel. #

VENDOR SALES ADDRESS: If same as W-9 check box

Company Name:

Street:

City: State Zip Code

Contact Name & Title:

Telephone # Fax #

E-Mail Address: Web Page:

VENDOR STATUS:

- (Yes) (No) Small business concern (Less than \$1,000,000.00 Annual Receipts or 100 employees.)
(Yes) (No) Disadvantage business concern (At least 51% owned by one or more socially disadvantaged individuals; or, a publicly-owned business at least 51% of the stock owned by one or more of such individuals.)
() Black Americans () Hispanic Americans
() Native Americans () Asian-Pacific Americans
(Yes) (No) Woman-owned business (At least 51% owned by a woman or women who also control and operate it.
(Yes) (No) Handicapped (At least 51% owned by a person or persons with an orthopedic, hearing, mental or visual impairment which substantially limits one of more of his/hers/their major life activities.)
(Yes) (No) Local business enterprise (At least 51% of which is owned by a resident or residents of El Paso County and the principal place of business is in El Paso County.)
(Yes) (No) Hub (Historically underutilized business) If your company is certified please send us a photo copy. We need to have an updated copy of the certificate on file.

CITY OF EL PASO EMPLOYEES (IRS-Withholding not required for the following items)

Pension Refund Mileage Reimbursement Settlement Travel Request Tuition Reimbursement

CONTRACTUAL EMPLOYEES OR VENDORS

- Based on W-9, Individual/Sole Proprietor or Partnership are marked as withholding. Corporation is not marked as withholding.
Vendors for Rent, Medical Services, Attorney Fees are always marked as withholding, even if they are a Corporation

IRS-Withholding required information - Mark one of the following which applies to the type of payment that will be made to the vendor: (Incomplete forms will be returned to requester),

- Wages (Withholding / Default Class 7) Juror (No Withholding / No Default Class)
Goods (No Withholding / No Default Class) Services (Withholding / Default Class 7)
Settlement / Attorney Proceeds (Withholding / Default Class 14) Rental Property (Withholding / Default Class 1)
Medical & Healthcare (Withholding / Default Class 6) Stipend (No Withholding / No Default Class)
Garnishment Vendor (No Withholding / No Default Class) Corporation (No Withholding / No Default Class)

6.6 W-9

Form **W-9**
(Rev. December 2011)
Department of the Treasury
Internal Revenue Service

**Request for Taxpayer
Identification Number and Certification**

**Give Form to the
requester. Do not
send to the IRS.**

Name (as shown on your income tax return)

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:

Individual/sole proprietor C Corporation S Corporation Partnership Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Exempt payee

Other (see instructions) ▶ _____

Address (number, street, and apt. or suite no.) **Requester's name and address (optional)**

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

| | | | | | | | | | | | |
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Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number

| | | | | | | | | | | | |
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| | | - | | | | | | | | | |
|--|--|---|--|--|--|--|--|--|--|--|--|

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here **Signature of U.S. person ▶** _____ **Date ▶** _____

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

City of El Paso
Accounts Payable
6.7 Direct Deposit Sign-Up Form

This form is used to collect important information to enroll, update or change your Direct Deposit request. Please complete and return to the Purchasing & Strategic Sourcing Department; see contact information provided below. For assistance, please call 915-212-1185.

Part I – Vendor / Employee Information

Name of Payee (Print) _____
Federal Taxpayer ID Number or Employee KRONOS ID# _____
Address: _____
City, State, and Zip Code _____
Telephone _____
E-mail (Print) _____

Part II – Direct Deposit Information

Action Requested: Start Direct Deposit Stop Direct Deposit Change Direct Deposit
Name of Financial Institution: _____
Routing Number (must be nine digits): _____
Bank Account Number: _____
Account Type: Checking Savings

For convenience, you may attach a voided check.
Do not use a deposit slip as some banking institutions do not display the correct routing number on deposit slips.

Part III – Terms and Conditions

I hereby authorize and request the City of El Paso to initiate credit entries and if necessary, a debit entry in accordance with National Automated Clearing House Association (NACHA) rules reversing a credit entry made in error, to my account at the financial institution named. The electronic payment is to remain in effect until withdrawn by written notification to the City of El Paso. Funds that are sent to a closed bank account are returned by the banking institutions within five (5) business days. Re-issued payments will be made when funds are returned to City of El Paso.

Signature

Date

Purchasing & Strategic Sourcing Department
300 N. Campbell, 1st floor – EL PASO TX 79901
Fax 915-212-0044
Email: SilvaML@elpasotexas.gov



PART 7 – TITLE VI

TITLE VI REQUIREMENT

Title VI Contract Provisions

Subrecipients of federal financial assistance must ensure that the clauses of Appendix A of the U.S. DOT Standard Title VI Assurances are inserted in every contract subject to the Act and the Regulations and that Form FHWA-1273 be physically attached to all federal-aid construction contracts of \$10,000 or more.

NOTE TO CONTRACTORS:

FORM 1273 and Appendix A (attached) must be inserted in all subcontractor contracts.

The successful bidder will be required to provide a copy of each of its subcontractors (all tiers) to verify that the above mentioned provisions are included.

REQUIRED CONTRACT PROVISIONS

FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a

construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO

program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where

evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with

Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable

accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees.

The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. Davis-Bacon and Related Act Provisions

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour

Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and

that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to

make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a

training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier

subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of

entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the

eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy

of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to

influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Attachment A
Form of Contract Clauses

STATE OF TEXAS)

)
COUNTY OF EL PASO)

LEASE

THIS Lease ("Lease") by and between CITY OF EL PASO, hereinafter called the "City," and _____, hereinafter called the "Lessor."

WHEREAS, the City has solicited bids pursuant to Solicitation No. _____ to lease space for a health clinic for the Women, Infants and Children (WIC) program overseen by the City's Department of Public Health, and the solicitation identified an area for the building to be within the identified zip code 799____ Area and required the successful bidder to make certain improvements to the property described herein; and

WHEREAS, the parties desire to enter into this lease for the term stated herein.

NOW THEREFORE, for and in consideration of the foregoing and in further consideration of the mutual benefits, the Parties hereto agree as follows:

1. **Premises.** The Lessor hereby leases to the City the following described property: approximately _____ square feet of usable space at [a building located upon a two block Addition, an portion of the] Lot _____, Block _____, _____ Addition to the City of El Paso, recorded in Volume _____, Page _____, in the official Real Property Records of the County of El Paso, Texas, which Leased Premises is located at the address commonly known as _____ Street, El Paso, Texas 799 _____.

The leased property described above is hereinafter referred to as the "Leased Premises" as depicted in the floor plan set forth as Exhibit "A"

The Lessor agrees that City will have use of approximately _____ parking spaces in the parking area at the Lessor's property on which the Leased Premises are located ("Parking Area") for use by city employees as well as its invitees.

2. **Term of Lease.** The term of this Lease shall be for _____ (____) years, commencing on the execution date of this Lease and ending on _____, 20____ ("Term").

3. **Option to Extend Term.** In the event that the City is not in default of any terms of this Lease, the City shall have the option to extend this Lease for _____ (____) additional term of _____ (____) years. The City may exercise the first _____ () year option ("First Option

Period”) by notifying the Lessor in writing at least ninety (90) days prior to the expiration of the Initial Term. In the event the City exercises its first option, the Lease shall be extended for three (3) years on the same terms and conditions, except that Rental Rate shall be adjusted as noted below.

The City’s options to extend the Lease shall terminate if the City fails to notify the Lessor in writing ninety (90) days before the expiration of the Initial Term or any relevant option period. Time is of the essence with regard to the ninety (90) day notice requirement.

4. **Rental Rate.** The Rental Rate for the Term will be at a rate of _____ Thousand _____ Hundred _____ and ____/100 Dollars (\$____) per month or _____ Thousand _____ Hundred and ____/100 (\$____) per annum. The Rental Rate for the Option Term will be at a rate of _____ Thousand _____ Hundred and _____ 100 Dollars (\$____) per month or _____ Thousand _____ Hundred and ____/100 (\$____) per annum.

5. **Hold over.** The Lessor and the City agree and understand that any holding over of the City on the Leased Premises at the expiration of this Lease, or extension hereto, shall operate and be constructed as a tenancy from month-to-month at the then current monthly rental, and all provisions of this Lease shall remain effective, so long as the City retains possession of the Leased Premises.

6. **Permitted Uses.** The City agrees to use the Leased Premises for general office, classroom, and clinic purposes consistent with its WIC Program.

7. **The City’s Responsibilities.** The City is responsible for the following:

- A. **Security.** The City will be responsible for providing security of the Leased Premises.
- B. **Utilities.** The City will pay for the utility charges for the water, gas, electricity, and telephone service all separately metered and used by the City in the building at the Leased Premises.
- C. **Pest Control.** The City will be responsible for keeping the Leased Premises free of pest infestation.
- D. **Trash and Medical Waste Removal.** The City will be responsible for trash removal and medical waste disposal.
- E. **Signs.** The City shall not place any signs at or about the Leased Premises, except when first approved by the Lessor, such approval not to be unreasonably withheld.
- F. **Care of Interior.** The City agrees to take good care of the interior of the Leased Premises and fixtures and suffer no waste. At the end of the term and any

extension thereof, the City will leave the Leased Premises in good order and condition, ordinary wear and tear and damage by fire and elements only accepted.

8. **The Lessor's Responsibilities.** The Lessor is responsible for the following:

- G. Maintenance. The Lessor shall be responsible for all building maintenance and repair, including but not limited to heating, cooling, plumbing, and electrical. The Lessor is responsible for providing adequate heating and refrigerated air conditioning with venting to all areas as proven by a test and balance report submitted prior to the City's acceptance of the Leased Premises and is responsible for maintaining the heating and refrigerated air conditioning in good working conditions year round.
- H. Parking Areas. The Lessor shall be responsible for maintenance, cleaning and repair of the parking spaces for a minimum of _____ vehicles at _____ throughout the Term. In addition, the Lessor shall be responsible for maintenance, cleaning and repair of the sidewalks adjacent to the building, landscaped areas, and any other areas outside the Leased Premises that the City and participants in the WIC program may access.
- I. Painting. The Lessor shall repaint the entire building (interior and exterior) prior to the City's occupancy and every _____ years for the entire lease term and any option terms exercised by the City. The Lessor shall have the right to remove any sign or signs in order to paint the Leased Premises or make any other alterations, and the Lessor agrees to bear the expense of the removal or installation of any signs under this provision.
- J. Utilities and Utility Lines. The Lessor is responsible for payment of utility charges and the repairs of any utility lines on the Leased Premises, including but not limited to the parking areas, sidewalks adjacent to the building, landscaped areas, and any other open or common areas that the City.
- K. Leased Premises. The Lessor will keep the interior and exterior walls, foundation, roofs, doors, windows, plumbing, cooling and heating systems, blinds or drapes, phone jacks, cabling infrastructure and other equipment of the building in good working order and shall maintain the same in compliance with all governmental requirements and regulations. The Lessor will be responsible for, as well as the any repairs of any utility lines providing service to the Leased Premises.
- L. Repairs. In the event the Leased Premises need repairs, the City will give immediate notice to the Lessor, and the Lessor agrees to arrange for maintenance personnel on a 24-hour basis. The Lessor shall respond within 24 hours of notice of emergency work order requests by the City and within 10 days of notice of non-emergency work order requests by the City. If the Lessor fails to respond and begin repairs within twenty-four (24) hours of receiving notice of repairs which are essential to the health and safety of the City, its, agents, personnel or invitees

or repairs or which may damage the Leased Premises or the City's furniture and equipment or if the Lessor fails to respond and begin repairs within 10 days of receiving non-emergency work orders, the City may at its option:

- i. Make or have such repairs, without liability to the Lessor for any loss or damage which may result to the Lessor by reason of such repairs, the cost or expenses of which shall be presumed reasonable, and the Lessor shall immediately, upon receiving notice of such cost and expense, pay for the cost and expenses of such repairs;
- ii. Consider the Leased Premises uninhabitable, in which case the term of this Lease shall be automatically extended, at no additional cost to the Lease, for the length or time it takes for repairs to be made or the Leased Premises are otherwise habitable again. The Leased Premises shall be considered "uninhabitable" when in the City's sole discretion, the Leased Premises are not usable for the City's permitted use under this Lease; or
- iii. Deem such failure to begin or complete repairs a default and pursue any and all legal remedies available to the City.

The Lessor shall not be required to repair damages caused by negligence of the City's employees or agents. The City agrees to take good care of the interior of the Leased Premises and fixtures and suffer no waste. At the end of the term and any extension thereof, the City will leave the Leased Premises in good order and condition, ordinary wear and tear and damage by fire and the elements only accepted.

M. Emergency Contact. Lessor shall provide the telephone number of contact person in case of emergency repairs after hours and weekends.

N. Taxes. The Lessor shall pay any and all real property and personal property taxes assessed against the Leased Premises and Lessor's real property ownership. **In no event shall the City be deemed responsible for the payment of any taxes associated with the Leased Premises or this Lease.**

9. **Improvements**. No improvements, alterations or additions shall be made in or to the Leased Premises without the prior written of the Lessor, such consent not to be unreasonable withheld. All alterations, additions and improvements installed at the expense of the City shall be done of equal workmanship and materials as in the existing Leased Premises. Such alterations, additions and improvements may be removed by the City, unless to do so would cause permanent damage to the Leased Premises, in which case the alterations, additions or improvements shall become the property of the Lessor, and shall remain upon and be surrendered with the Leased Premises as a part thereof at the termination of this Lease.

10. **Solicitation No.** . The Lessor also agrees to that the terms and conditions of the Solicitation No. _____ and its bid proposal attached hereto as Exhibit "B" and incorporated herein for all purposes. The Lessor will complete the identified improvements as

identified and within the time schedules identified in the Solicitation

No.__. Any conflict between the terms and conditions of said award and this agreement shall be resolved in favor of this agreement.

11. **Indemnification.** The Lessor shall defend, indemnify and hold the City, its agents, officers, employees and volunteers free and harmless from any liability for injury or damage to any persons or property arising out of the City's use of the Leased Premises including all costs, expenses and attorney's fees incurred by the City in defense of such claims.

12. **Insurance.** The Lessor, at his sole cost and expense shall, throughout the term of this Lease, or any extension hereof, provide and keep in force for the benefit of the Lessor and the City, comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS, (\$1,000,000.00) covering the Lessor and its employees, ONE MILLION DOLLARS (\$1,000,000.00) for protection of the general public and the City per occurrence for bodily injury or wrongful death and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for property damage. All policies of insurance shall be written by insurance companies authorized to do business in Texas. The City, its officers, agents, employees and volunteers shall be carried as co-insureds and a certificate of insurance acknowledging the amounts and persons covered shall be delivered by the Lessor to the City upon execution of this agreement. All insurance policies required by this Lease shall contain a provision that the policy shall not be canceled or reduced in any amount without at least sixty (60) days notice to the City.

13. **Assignment and Subleases.** The City shall not assign this agreement or sublet the Leased Premises, or any part thereof, without obtaining the consent of the Lessor in writing.

14. **Destruction of Leased Premises.** The City will give immediate written notice to the Lessor of any damage caused to the Leased Premises by fire or other casualty.

In the event the Leased Premises are damaged or destroyed by fire or other casualty and the Lessor does not elect to terminate this lease as hereinafter provided, the Lessor shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Leased Premises. If the building which is a part of the Leased Premises is destroyed or substantially damaged by fire or other casualty which the City determines substantially interferes with the City's permitted use, then the Lessor may elect either to terminate this lease or to proceed to rebuild and repair the leased Premises. The Lessor shall give written notice to the City of such election within ten (10) calendar days after the occurrence of such casualty and if the Lessor elects to rebuild and repair shall proceed to do so with reasonable diligence and at its sole cost and expense. The Lessor's obligations to rebuild and repair under this section shall be limited to restoring the Leased Premises and the building and improvements thereon to substantially the condition in which the same existed prior to such causality except for any fixtures and equipment installed by Lessee which were not to become permanent fixtures for the benefit of the Lessor. If, because of damage or destruction resulting from any cause whatsoever, the Leased Premises are damaged to the extent that the City determines it cannot, without substantial inconvenience, expense or impairment of its ability to operate as necessary, operate as allowed under permitted uses, then from the date of occurrence of such damage or destruction until the date such damage or destruction has been completely repaired and the Lease Premises have been restored to the condition they were in immediately prior to the occurrence of such damage or

destruction, there shall be a complete abatement or rent (prorated on a daily basis), and the City is not obligated to pay rent for such period. If, in the event, any damage to or destruction of the Leased Premises, the City reasonably concludes that the restoration of the Leased Premises to the condition in which they existed immediately prior to the occurrence of such damage or destruction is not likely to be completed until a date which is more than ninety (90) calendar days from the date of such damage or destruction occurred, the City or the Lessor may terminate without penalty or other liability this lease by giving written notice to the Lessor or the City no later than five calendar days after the occurrence of such damage or destruction, with the termination of the lease to be effective as of the date of such damage or destruction.

15. **Notices.** Any notices required or desired shall be sent certified mail, return receipt requested to the following address:

City: City Manager
City of El Paso
P. O. Box 1890
El Paso, Texas 79950-1890

Copy to: Real Estate Manager
Economic & International Development Dept.
P.O. Box 1890
El Paso, Texas 79950-1890

Director
Department of Public Health 5115
El Paso Drive
El Paso, Texas 79905

Lessor: _____

El Paso, Texas 799_____

16. **Default.** If the Lessor defaults on any of the covenants contained herein, the City may cancel the lease, if, after thirty (30) days written notice, the Lessor has either not cured the default or commenced action to cure the default. Any default which the Lessor begins to cure within ten (10) days after notice there of shall not be deemed cured unless the Lessor completely cures default within a reasonable time thereafter. Upon cancellation of this lease under the terms of this provision the City shall have no further obligation under the terms of the Lease.

17. **WIC Funding/Subject to Appropriation.** In the event of a fifty percent (50%) or greater reduction in the level of federal funding for the City's WIC Program, the City shall have the option to terminate this lease, without penalty, after giving the Lessor thirty (30) days written notice to that effect, during which time the City may vacate the Leased Premises in whole or in part.

- 18. **Legal Construction.** If any provision of this lease is found by court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected.
- 19. **Venue.** Venue shall be in El Paso, El Paso County, Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease.
- 20. **Complete Agreement.** The covenants and conditions herein are the full and complete terms of this Lease and no alteration, amendments or modifications of said terms and conditions shall be binding unless first reduced to writing and signed by both parties.

WITNESS THE FOLLOWING SIGNATURES ON THE DATE SHOWN BELOW.

PASSED AND APPROVED this _____ day of _____, 2014.

THE CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Bertha A. Ontiveros
Senior Assistant City Attorney

Cary S. Westin, Director
Economic & International Development

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me this _____ day of _____ 2014, by **Tomás González, as City Manager of the City of El Paso.**

Notary Public, State of Texas

My commission expires: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LESSOR:

By: _____

Name Printed:

Title:

ACKNOWLEDGMENT

STATE OF TEXAS)

)

COUNTY OF EL PASO)

This instrument was acknowledged before me this _____ day of _____ 2014,
by _____, as Lessor.

Notary Public, State of Texas

My commission expires: